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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE EIGHTEENTH INSTALMENT OF "E3" CLAIMS

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ENG

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Introduction

1. The Governing Council of the United Nations Compensation Commission (the "Commission") appointed the present Panel of Commissioners (the "Panel"), composed of Messrs. Werner Melis (Chairman), David Mace and Sompong Sucharitkul, at its twenty-second session in October 1996 to review construction and engineering claims filed with the Commission on behalf of corporations and other legal entities in accordance with the relevant Security Council resolutions, the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules") and other Governing Council decisions. This report contains the recommendations to the Governing Council by the Panel, pursuant to article 38(e) of the Rules, concerning twelve claims included in the eighteenth instalment. Each of the claimants seeks compensation for loss, damage or injury allegedly arising out of Iraq's 2 August 1990 invasion and subsequent occupation of Kuwait. The claims submitted to the Panel in this instalment and addressed in this report were selected by the secretariat of the Commission from among the construction and engineering claims (the "E3 Claims") on the basis of criteria established under the Rules.

I. PROCEDURAL HISTORY

A. The nature and purpose of the proceedings

2. The status and functions of the Commission are set forth in the report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 689 (1991) dated 2 May 1991 (S/22559). Pursuant to that report, the Commission is a fact-finding body that examines claims, verifies their validity, evaluates losses, recommends compensation, and makes payment of awards.

3. The Panel has been entrusted with three tasks in its proceedings. First, the Panel determines whether the various types of losses alleged by the claimants are within the jurisdiction of the Commission. Second, the Panel verifies whether the alleged losses are in principle compensable and had in fact directly resulted from Iraq's invasion and occupation of Kuwait. Third, the Panel determines whether these compensable losses were incurred in the amounts claimed.

B. The procedural history of the claims in the eighteenth instalment

4. On 17 July 2000, the Panel issued a procedural order relating to the claims. None of the claims presented complex issues, voluminous documentation or extraordinary losses that would require the Panel to classify any of the claims as "unusually large or complex" within the meaning of article 38(d) of the Rules. The Panel thus decided to complete its review of the claims within 180 days of the date of 17 July 2000.

5. The Panel performed a thorough and detailed factual and legal review of the claims. The Panel considered the evidence submitted by the claimants in reply to requests for information and documents. It also considered Iraq's responses to the factual and legal issues raised in the thirtieth report of the Executive Secretary issued on 17 March 2000 in accordance with article 16 of the Rules.

6. After a review of the relevant information and documentation, the Panel made initial determinations as to the compensability of the loss elements of each claim. Pursuant to article 36 of the Rules, the Panel retained as its expert consultants accounting and loss adjusting firms, both with international and Persian Gulf experience, to assist the Panel in the quantification of losses incurred in large construction projects. The Panel then directed its expert consultants to prepare comprehensive valuation reports on each of the claims.

7. In drafting this report, the Panel has not included specific citations to restricted or non-public documents that were produced or made available to it for the completion of its work.

C. Amending claims after filing

8. The Panel notes that the period for filing category "E" claims expired on 1 January 1996. The Governing Council permitted claimants to file unsolicited supplements up to and including 11 May 1998. A number of the claimants included in the eighteenth instalment had submitted several supplements to their claimed amount up to 11 May 1998. In this report, the Panel has taken into consideration such supplements up to 11 May 1998. The Panel has only considered those losses contained in the original claim, as supplemented by the claimants, up to 11 May 1998, except where such losses have been withdrawn or reduced by the claimants. Where the claimants reduced the amount of their losses the Panel has considered the reduced amount. This, however, does not preclude corrections relating to arithmetical and typographical errors.

D. The claims

9. This report contains the Panel's findings for losses allegedly caused by Iraq's invasion and occupation of Kuwait with respect to the following claims:

(a) SHAL International, a division of SHAL Consulting Engineers, Inc., a corporation organised according to the laws of Canada, which seeks compensation in the amount of United States dollars (USD) 78,883;

(b) China Sichuan Corporation for International Techno-Economic Cooperation, a state-owned corporation organised according to the laws of China, which seeks compensation in the amount of USD 24,422;

(c) China Ningxia Islamic Corporation for International Economic and Technical Cooperation, a state-owned corporation organised according to the laws of China, which seeks compensation in the amount of USD 179,379;

(d) The Arab Contractors "Osman Ahmed Osman & Co", a joint stock public corporation organised according to the laws of Egypt, which seeks compensation in the amount of USD 7,582,359;

(e) Campenon Bernard, a partnership with legal personality ("société et nom collectif") organised according to the laws of France, which seeks compensation in the amount of USD 8,762,478;

(f) Brückner Grundbau GmbH, a corporation organised according to the laws of Germany, which seeks compensation in the amount of USD 3,961,045;

(g) Technika Hungarian Foreign Trading Company, a state-owned corporation organised according to the laws of Hungary, which seeks compensation in the amount of USD 414,640;

(h) Transinvest Engineering and Contracting Limited, a corporation organised according to the laws of Hungary, which seeks compensation in the amount of USD 407,159;

(i) Associated Consulting Engineers S.A.L., a corporation organised according to the laws of Lebanon, which seeks compensation in the amount of USD 1,721,162;

(j) Mouchel Consulting Limited, a corporation organised according to the laws of the United Kingdom of Great Britain and Northern Ireland, which seeks compensation in the amount of USD 1,167,318;

(k) Intergraph Corporation, a corporation organised according to the laws of the United States of America, which seeks compensation in the amount of USD 2,247,775; and

(l) Parsons, De Leuw, Inc., a corporation organised according to the laws of the United States of America, which seeks compensation in the amount of USD 1,265,503.

II. LEGAL FRAMEWORK

A. Applicable law

10. As set forth in paragraphs 16-18 and 23 of the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of 'E3' Claims" (S/AC.26/1998/13) (the "First Report"), the Panel determined that paragraph 16 of Security Council resolution 687 (1991) reaffirmed the liability of Iraq and defined the jurisdiction of the Commission. The Panel applied Security Council resolution 687 (1991), other relevant Security Council resolutions, decisions of the Governing Council, and, where necessary, other relevant rules of international law.

B. Liability of Iraq

11. As set forth in paragraph 16 of the "Report and Recommendations Made by the Panel of Commissioners concerning the Third Instalment of 'E3' Claims (S/AC.26/1999/1) (the "Third Report"), the Panel determined that "Iraq" as used in decision 9 (S/AC.26/1992/9) means the Government of Iraq, its political subdivisions, or any agency, ministry, instrumentality or entity (notably public sector enterprises) controlled by the Government of Iraq. At the time of Iraq's invasion and occupation of Kuwait, the Government of Iraq regulated all aspects of economic life other than some peripheral agriculture, services and trade.

C. The "arising prior to" clause

12. In paragraphs 79-81 of its First Report, the Panel adopted the following interpretation of the "arising prior to" clause in paragraph 16 of Security Council resolution 687 (1991) with respect to contracts to which Iraq was a party:

(a) the phrase "without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through normal mechanisms" was intended to have an exclusionary effect on the Commission's jurisdiction, i.e., that such debts and obligations could not be brought before the Commission;

(b) the period described by "arising prior to 2 August 1990" should be interpreted with due consideration to the purpose of the phrase, which was to exclude Iraq's existing bad debts from the Commission's jurisdiction;

(c) the terms "debts" and "obligations" should be given the customary and usual meanings applied to them in ordinary discourse; and

(d) the use of a three month payment delay period to define the jurisdictional period is reasonable and consistent both with the economic reality in Iraq prior to the invasion and with ordinary commercial practices.

13. The Panel finds that a claim relating to a "debt or obligation arising prior to 2 August 1990" means a debt for payment that is based on work performed or services rendered prior to 2 May 1990.

D. Application of the "direct loss" requirement

14. The Governing Council's decision 7 (S/AC.26/1991/7/Rev.1), decision 9 (S/AC.26/1992/9) and decision 15 (S/AC.26/1992/15) provide specific instructions to the Panel regarding the interpretation of the "direct loss" requirement. Applying these decisions, the Panel examined the loss types presented in the claims to determine whether, with respect to each loss element, the requisite causal link - a "direct loss" - was present.

15. The Panel made the following findings regarding the meaning of "direct loss":

(a) with respect to physical assets in Iraq and in Kuwait on 2 August 1990, a claimant can prove a direct loss by demonstrating that the breakdown in civil order in those countries, which resulted from Iraq's invasion and occupation of Kuwait, caused the claimant to evacuate its employees and that the evacuation resulted in the abandonment of the claimant's physical assets;

(b) with respect to losses relating to contracts to which Iraq was a party, Iraq may not rely on force majeure or similar legal principles as a defence to its obligations under the contract;

(c) with respect to losses relating to contracts to which Iraq was not a party, a claimant may prove a direct loss if it can establish that Iraq's invasion and occupation of Kuwait or the breakdown in civil order in Iraq or Kuwait following the invasion caused the claimant to evacuate the personnel needed to perform the contract;

(d) costs incurred in taking reasonable steps to mitigate the losses incurred by the claimant are direct losses, bearing in mind that the claimant was under a duty to mitigate any losses that could reasonably be avoided after the evacuation of its personnel from Iraq or Kuwait; and

(e) the loss of use of funds on deposit in Iraqi banks is not a direct loss unless the claimant can demonstrate that Iraq was under a contractual or other specific duty to exchange those funds for convertible currencies and to authorize the transfer of the converted funds out of Iraq and that this exchange and transfer was prevented by Iraq's invasion and occupation of Kuwait.

E. Loss of profits

16. In order to substantiate a claim for loss of profits, a claimant must prove that it had an existing contractual relationship at the time of the invasion. Second, a claimant must prove that the continuation of the relationship was rendered impossible by Iraq's invasion and occupation of Kuwait. Finally, profits should be measured over the life of the contract. A claimant must demonstrate that the contract would have been profitable as a whole. Thus, a claimant must demonstrate that it would have been profitable to complete the contract, not just that the contract was profitable at a single moment in time.

17. Calculations of a loss of profits claim should take into account the inherent risks of the particular project and the ability of a claimant to realize a profit in the past. The speculative nature of some projects requires the Panel to view the evidence submitted with a critical eye. In order to establish with "reasonable certainty" a loss of profits claim, the

Panel requires that a claimant submit not only the contracts and invoices related to the various projects, but also detailed financial statements, including audited statements where available, management reports, budgets, accounts, time schedules, progress reports, and a breakdown of revenues and costs, actual and projected, for the project.

F. Date of loss

18. The Panel must determine "the date the loss occurred" within the meaning of Governing Council decision 16 (S/AC.26/1992/16) for the purpose of recommending compensation for interest and for the purpose of determining the appropriate exchange rate to be applied to losses stated in currencies other than in United States dollars. Where applicable, the Panel has determined the date of loss for each claim.

G. Interest

19. According to decision 16 (S/AC.26/1992/16), "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." In decision 16 the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards," while postponing decision on the methods of calculation and payment of interest.

20. The Panel finds that interest shall run from the date of loss, or, unless otherwise established, 2 August 1990.

H. Currency exchange rate

21. While many of the costs incurred by the claimants were denominated in currencies other than United States dollars, the Commission issues its awards in that currency. Therefore, the Panel is required to determine the appropriate rate of exchange to apply to losses expressed in other currencies.

22. The Panel finds that the exchange rate set forth in the contract is the appropriate rate for losses under the relevant contracts because this was specifically bargained for and agreed to by the parties.

23. For non-contractual losses, the Panel finds the appropriate exchange rate to be the prevailing commercial rate, as evidenced by the United Nations Monthly Bulletin of Statistics on the date of loss, or, unless otherwise established, from 2 August 1990.

I. Evacuation losses

24. In accordance with paragraph 21(b) of decision 7 of the Governing Council, the Panel finds that the costs associated with evacuating and repatriating employees from Iraq between 2 August 1990 and 2 March 1991 are

compensable to the extent that such costs are proven by the claimant. Compensable costs consist of temporary and extraordinary expenses relating to evacuation and repatriation, including transportation, food and accommodation.

J. Valuation

25. The Panel developed, with the assistance of the secretariat and the Panel's expert consultants, a verification program that addresses each loss item. The valuation analysis used by the Panel's expert consultants ensures clarity and consistency in the application of certain valuation principles to the construction and engineering claims.

26. After receipt of all claim information and evidence, the Panel's expert consultants applied the verification program. Each loss element was analysed individually according to a set of instructions. The expert consultants' analysis resulted in a recommendation of compensation in the amount claimed, an adjustment to the amount claimed, or a recommendation of no compensation for each loss element. In those instances where the Panel's expert consultants were unable to respond decisively, the issue was brought to the attention of the Panel for further discussion and development.

27. For tangible property losses, the Panel adopted historical cost minus depreciation as its primary valuation method.

K. Formal requirements

28. Claims submitted to the Commission must meet certain formal requirements established by the Governing Council. Article 14 of the Rules sets forth the formal requirements for claims submitted by corporations and other legal entities. If it is determined that a claim does not meet the formal requirements as set forth in article 14 of the Rules, the claimant is sent a notification under article 15 of the Rules (the "article 15 notification") requesting the claimant to remedy the deficiencies.

L. Evidentiary requirements

29. Pursuant to article 35(3) of the Rules, corporate claims must be supported by evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has made it clear in paragraph 5 of decision 15 that, with respect to business losses, there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order to recommend compensation.

30. The category "E" claim form requires all corporations and other legal entities that have filed claims to submit with their claim form "a separate statement explaining its claim ('Statement of Claim'), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss".

31. In those cases where the original submission of the claim inadequately supported the alleged loss, the secretariat prepared and issued a written communication to the claimant requesting specific information and documentation regarding the loss (the "article 34 notification"). In reviewing the subsequent submissions, the Panel noted that in many cases the claimant still did not provide sufficient evidence to support its alleged losses.

32. The Panel is required to determine whether these claims are supported by sufficient evidence and, for those that are so supported, must recommend the appropriate amount of compensation for each compensable claim element. This requires the application of relevant principles of the Commission's rules on evidence and an assessment of the loss elements according to these principles. The recommendations of the Panel are set forth below.

III. SHAL INTERNATIONAL

33. SHAL International ("SHAL") is a division of SHAL Consulting Engineers, Inc., a corporation organised according to the laws of Canada that has carried out consulting work in Kuwait for 25 years.

34. In the "E" claim form, SHAL sought compensation in the amount of 90,889 Canadian dollars (CAD) (USD 78,883) for losses related to business transactions or course of dealing. The Panel reclassified this element of loss as other losses for the purposes of this report.

Table 1. SHAL's claim

Claim element	Claim amount (USD)
Other losses	78,883
Total	78,883

A. Other losses

1. Facts and contentions

35. SHAL seeks compensation in the amount of CAD 90,889 (USD 78,883) for other losses allegedly incurred in connection with marketing activities undertaken in Kuwait between September 1988 and August 1990.

36. SHAL alleges that in the latter part of 1988 until the date of Iraq's invasion and occupation of Kuwait, it carried out extensive business development for a number of projects in Kuwait, resulting in the submission of tenders to the Ministry of Public Works of Kuwait and various visits to Kuwait.

37. In March 1990, SHAL was selected to submit tenders for two projects. SHAL states that it incurred expenses in the amount of CAD 90,889 between September 1988 and August 1990 in relation to the initial preparation and negotiation of these tenders, which were submitted to the Ministry of Public Works of Kuwait. No contracts were ever executed prior to Iraq's invasion and occupation of Kuwait.

2. Analysis and valuation

38. As evidence of its claim for other losses, SHAL provided internally generated lists itemising the visits that it made to Kuwait and the expenses that it incurred in connection with the preparation of the tenders. It also provided its registration with the Ministry of Planning of Kuwait and confirmation of its ability to participate in the tender for one of the projects.

39. The Panel finds that SHAL's expenses were incurred solely in furtherance of its efforts to obtain contracts with the Ministry of Public Works of Kuwait for the two projects. The expenses represented an opportunity cost, which SHAL was never assured of recovering from the Ministry of Public Works of Kuwait, even if it had been successful in obtaining the contracts. In any event, no contracts were ever signed.

40. The Panel finds that the expenses are not compensable because such expenses are not losses which directly resulted from Iraq's invasion and occupation of Kuwait.

3. Recommendation

41. The Panel recommends no compensation for other losses.

B. Recommendation for SHAL

Table 2. Recommended compensation for SHAL

Claim element	Claim amount (USD)	Recommended compensation (USD)
Other losses	78,883	nil
Total	78,883	nil

42. Based on its findings regarding SHAL's claim, the Panel recommends no compensation.

IV. CHINA SICHUAN CORPORATION FOR INTERNATIONAL TECHNO-ECONOMIC COOPERATION

43. China Sichuan Corporation for International Techno-Economic Cooperation ("China Sichuan") is a state-owned corporation organised according to the laws of China. At the time of Iraq's invasion and occupation of Kuwait, China Sichuan provided engineering and technical labour services for Kuwaiti construction companies. China Sichuan seeks compensation in the amount of USD 24,422 for loss of tangible property.

Table 3. China Sichuan's claim

Claim element	Claim amount (USD)
Loss of tangible property	24,422
Total	24,422

A. Loss of tangible property

1. Facts and contentions

44. China Sichuan seeks compensation in the amount of USD 24,422 for loss of tangible property. The claim is for the alleged loss of a number of household items and two cars located at China Sichuan's rental property in Kuwait. China Sichuan used the rental property as an office from March 1988 while it worked on various projects in Kuwait.

45. China Sichuan alleges that following Iraq's invasion and occupation of Kuwait, the tangible property located in the rental property was destroyed. It further alleges that its employees were forced to leave Kuwait as a result of Iraq's invasion and occupation of Kuwait.

2. Analysis and valuation

46. China Sichuan provided as evidence of its alleged losses 17 original invoices. The invoices show that all of the items of property were purchased in 1989 and 1990 in Kuwait. Although it is not clear from the translations of the invoices whether they were made out to China Sichuan, China Sichuan provided confirmation that the employees who authorised the purchase of the items did so on behalf of China Sichuan, that the invoices were genuine, and that China Sichuan owned the items. The Panel finds that China Sichuan provided sufficient evidence of its title to or right to use, and the presence in Kuwait of, the items of tangible property.

47. The Panel finds that China Sichuan incurred the alleged losses as a direct result of Iraq's invasion and occupation of Kuwait.

48. In relation to the date of loss, the Panel accepts China Sichuan's assertion that 2 August 1990 is the date of loss.

49. The Panel requested its expert consultants to perform a valuation of the losses. The Panel's expert consultants applied depreciation rates appropriate for such items and concluded that the items had a value of USD 21,396 as at 2 August 1990. The Panel accepts the expert consultants' conclusion.

3. Recommendation

50. The Panel recommends compensation in the amount of USD 21,396 for loss of tangible property.

B. Recommendation for China Sichuan

Table 4. Recommended compensation for China Sichuan

Claim element	Claim amount (USD)	Recommended compensation (USD)
Loss of tangible property	24,422	21,396
Total	24,422	21,396

51. Based on its findings regarding China Sichuan's claim, the Panel recommends compensation in the amount of USD 21,396. The Panel finds the date of loss to be 2 August 1990.

V. CHINA NINGXIA ISLAMIC CORPORATION FOR INTERNATIONAL ECONOMIC AND TECHNICAL COOPERATION

52. China Ningxia Islamic Corporation for International Economic and Technical Cooperation ("China Ningxia") is a state-owned corporation organised according to the laws of China. China Ningxia operates in the construction industry.

53. In the "E" claim form, China Ningxia sought compensation in the amount of 42,571 Kuwaiti dinars (KWD) and USD 32,076 (total amount in United States dollars of USD 179,379) for losses related to business transactions or course of dealing, contract losses, loss of tangible property, payment or relief to others and interest.

54. The Panel has reclassified elements of China Ningxia's claim for the purposes of this report. The Panel therefore considered the amount of KWD 42,571 and USD 32,076 (total amount in United States dollars of USD 179,379) for contract losses, loss of profits, loss of tangible property, payment or relief to others and interest, as follows:

Table 5. China Ningxia's claim

Claim element	Claim amount (USD)
Contract losses	121,148
Loss of profits	10,381
Loss of tangible property	15,774
Payment or relief to others	32,076
Interest (no amount specified)	(--)
Total	179,379

A. Contract losses

1. Facts and contentions

55. China Ningxia seeks compensation in the amount of KWD 35,012 (USD 121,148) for contract losses allegedly incurred in connection with two sub-contracts for the supply of labour to Kuwaiti parties. China Ningxia asserts that Iraq's invasion and occupation of Kuwait interrupted its performance under these sub-contracts.

56. China Ningxia originally classified the claim for contract losses as "losses related to business transactions or course of dealing", but the losses are more appropriately dealt with as contract losses.

(a) Sub-contract with Sibwan

57. China Ningxia entered into a sub-contract with Sibwan General Trading and Contracting Co. of Kuwait ("Sibwan") on 5 February 1988 to perform repair work on the facades of houses in the Al-Dahar Housing Area in Kuwait for the Kuwait National Housing Authority.

58. China Ningxia alleges that as a result of Iraq's invasion and occupation of Kuwait, work on the construction of the houses could not continue. China Ningxia alleges that Sibwan paid it KWD 14,100. However, Sibwan did not pay what appears to be the balance of the amount owed, KWD 23,162. China Ningxia alleges that subsequent to and consequent upon Iraq's invasion and occupation of Kuwait, Sibwan became bankrupt.

59. In its reply to the article 34 notification, China Ningxia stated that the contract sum and the commencement dates were not expressed in the executed sub-contract. However, it stated that work commenced at the time the sub-contract was signed. China Ningxia asserted that because of the complexity of the project, Sibwan agreed to pay China Ningxia for the works, as and when China Ningxia completed the works.

(b) Sub-contract with Aziz

60. China Ningxia entered into a sub-contract with Aziz Constructions Co. of Kuwait ("Aziz") on 12 September 1989 to perform repair works.

61. China Ningxia alleges that it was forced to cease operations as a result of Iraq's invasion and occupation of Kuwait. China Ningxia seeks compensation in the amount of KWD 11,850, representing the outstanding amount which Aziz owes China Ningxia for work performed. China Ningxia alleges that subsequent to and consequent upon Iraq's invasion and occupation of Kuwait, Aziz became bankrupt.

62. China Ningxia provided what appears to be the sub-contract with Aziz. However, the document has not been translated. Accordingly, the Panel was unable to determine the contractual terms of payment. In its reply to the article 34 notification, China Ningxia states that the contract sum and the commencement dates were not expressed in the signed contract. However, it stated that work commenced at the time the sub-contract was signed. It also provided a summary of the invoices it rendered in the amount of KWD 26,429. China Ningxia asserted that because of the complexity of the project, Aziz agreed to pay China Ningxia for the works, as and when China Ningxia completed the works.

2. Analysis and valuation

63. China Ningxia failed to provide a complete copy of the sub-contract with Sibwan. It provided a few invoices in support of its claim. The last translated invoice which it provided is dated 12 July 1989.

64. China Ningxia failed to provide a translation of the sub-contract with Aziz or of the invoices. As such, the Panel was unable to verify that the work was actually performed or, if so, when the work was performed.

65. This Panel has found that a claimant must provide specific proof that the failure of a Kuwaiti debtor to pay was a direct result of Iraq's invasion and occupation of Kuwait. To meet this requirement, a claimant must demonstrate, for example, that a business debtor was rendered unable to pay due to insolvency or bankruptcy caused by the destruction of its business during Iraq's invasion and occupation of Kuwait, or that the business debtor was otherwise entitled to refuse to pay the claimant. China Ningxia did not supply such proof.

66. The Panel finds that China Ningxia did not demonstrate that its losses under both sub-contracts were the direct result of Iraq's invasion and occupation of Kuwait. In relation to the sub-contract with Sibwan, the Panel finds that China Ningxia performed the work well before 2 August 1990. In relation to the sub-contract with Aziz, there is insufficient evidence of performance of the work.

67. Further, China Ningxia failed to demonstrate that the failure of the Kuwaiti contractors to pay the amounts due and owing was a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

68. Based on its findings in paragraphs 66-67, supra, the Panel recommends no compensation for contract losses.

B. Loss of profits

1. Facts and contentions

69. China Ningxia seeks compensation in the amount of KWD 3,000 (USD 10,381) for loss of profits. This represents the value of China Ningxia's work under its sub-contract with Aziz for repair work on five flats in Kuwait commencing on 25 July 1990.

70. China Ningxia originally classified this part of the claim as "contract losses", but the losses are more appropriately dealt with as loss of profits.

2. Analysis and valuation

71. The requirements to substantiate a loss of profits claim have been stated by the Panel in paragraphs 16 and 17, supra.

72. In support of its claim, China Ningxia provided two internally generated tables. The first table was not translated. The second table contained lists of numbers without reference to their significance. In the article 34 notification, China Ningxia was asked to provide evidence such

as the contract, audited financial statements, budgets, management accounts, or turnover prepared by or on behalf of China Ningxia. It did not provide any of this information.

73. The Panel recommends no compensation as China Ningxia failed to provide sufficient evidence to substantiate its loss of profits claim.

3. Recommendation

74. The Panel recommends no compensation for loss of profits.

C. Loss of tangible property

1. Facts and contentions

75. China Ningxia seeks compensation in the amount of KWD 4,559 (USD 15,774) for loss of tangible property. The claim is for the alleged loss of tangible property in Kuwait purchased from 1988 onwards.

76. China Ningxia alleges that because its employees had to return to China on 21 August 1990, all of its property was lost. China Ningxia did not return to Kuwait after Kuwait's liberation.

2. Analysis and valuation

77. China Ningxia provided as evidence of its alleged losses two undated internally generated "bills of quantity" of the items that were allegedly lost as a result of Iraq's invasion and occupation of Kuwait. China Ningxia stated that the purchase invoices were destroyed during Iraq's invasion and occupation of Kuwait. China Ningxia did not provide any other evidence to establish ownership.

78. The Panel finds that China Ningxia did not submit evidence which demonstrated its title to or right to use the assets, and the value and the presence of the tangible property in Kuwait. The Panel finds that China Ningxia failed to submit sufficient evidence to substantiate its loss of tangible property claim.

3. Recommendation

79. The Panel recommends no compensation for loss of tangible property.

D. Payment or relief to others

1. Facts and contentions

80. China Ningxia seeks compensation in the amount of USD 32,076 for payment or relief to others. The claim is for the alleged costs of repatriating 18 of its employees to China as a result of Iraq's invasion and occupation of Kuwait (USD 24,876), and payments to the employees from a "life relief fund" (USD 7,200).

81. China Ningxia alleges that the cost of repatriating its 18 employees amounted to USD 23,976 for airfares and war risk insurance. China Ningxia alleges that it also incurred costs in the amount of USD 900 on behalf of its 18 employees for domestic travel costs when they returned to China. China Ningxia further states that upon their return, the 18 employees were unable to find work in China. As a result, China Ningxia allegedly paid each of the 18 employees the amount of USD 400 from a "life relief fund" for a total amount of USD 7,200.

2. Analysis and valuation

82. China Ningxia provided as evidence of its alleged losses an internally generated list of the personnel who were repatriated to China, including relevant identification details. In relation to the life relief fund, China Ningxia also provided documentation signed by the employees showing that they had received the claimed amounts from China Ningxia. China Ningxia did not, however, explain whether it was legally or contractually required to pay its employees these amounts, in lieu of, for example, a notice period, and would, therefore, have not incurred these costs under normal circumstances.

83. In relation to the airfares, China Ningxia also provided a certificate dated 26 April 2000, which certifies that, according to arrangements put into place by the Government of the People's Republic of China, Air China undertook to meet and transport China Ningxia's 18 Chinese employees from Kuwait to China after Iraq's invasion and occupation of Kuwait. However, China Ningxia did not provide any evidence of proof of payment in support of this loss element.

84. China Ningxia provided no evidence in relation to the domestic travel costs.

85. The Panel finds that, in relation to the airfares, the war risk insurance and the domestic travel costs, China Ningxia did not provide proof of payment. The Panel therefore recommends no compensation.

86. In relation to the life relief fund, the Panel finds that China Ningxia failed to demonstrate that this alleged loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no compensation.

3. Recommendation

87. The Panel recommends no compensation for payment or relief to others.

E. Interest

88. As the Panel recommends no compensation, there is no need for the Panel to determine the date of loss from which interest would accrue.

F. Recommendation for China Ningxia

Table 6. Recommended compensation for China Ningxia

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	121,148	nil
Loss of profits	10,381	nil
Loss of tangible property	15,774	nil
Payment or relief to others	32,076	nil
Interest (no amount specified)	(--)	nil
Total	179,379	nil

89. Based on its findings regarding China Ningxia's claim, the Panel recommends no compensation.

VI. THE ARAB CONTRACTORS "OSMAN AHMED OSMAN & CO."

90. The Arab Contractors "Osman Ahmed Osman & Co." ("Osman") is an joint stock public corporation organised according to the laws of Egypt. Osman operates as a contractor.

91. Osman did not file an "E" claim form. Osman originally filed an undated memorandum, in which it sought compensation in the amount of KWD 2,209,636 (USD 7,582,359) for losses associated with an arbitral award, financing charges and financial losses.

92. In the article 15 notification, the secretariat requested Osman to provide an "E" claim form. On 30 March 1999, the Commission received an "E" claim form dated 31 March 1997, in which Osman sought compensation in United States dollars, not Kuwaiti dinars as previously, in the amount of USD 14,508,425. Osman claimed for loss of tangible property and other losses, including a new claim for interest in the amount of USD 6,926,066 on the loss elements which it had claimed previously.

93. The Panel has only considered those losses contained in the original claim, except where such losses have been withdrawn or reduced by Osman. The Panel considers the original claim amount to be that contained in the undated memorandum, and not the "E" claim form. Although the "E" claim form is dated 31 March 1997, it was received by the Commission two years later, well after the date permitted for filing supplements (see paragraph 8, supra).

94. The Panel has reclassified some elements of Osman's losses for the purposes of this report. The Panel therefore considered the amount of KWD 2,209,636 (USD 7,582,359) for loss of tangible property, financial losses and other losses, as follows:

Table 7. Osman's claim

Claim element	Claim amount (USD)
Loss of tangible property	543,034
Financial losses	2,475,434
Other losses	4,563,891
Total	7,582,359

A. Loss of tangible property

1. Facts and contentions

95. Osman seeks compensation in the amount of KWD 158,250 (USD 543,034) for loss of tangible property in Kuwait. The claim is for the alleged loss of documents and cash, which were stored in the company safe; the contents

of Osman's stores, offices and employees' residences; and damage to vehicles and equipment which were on site in Kuwait. It is not clear what contracts Osman was carrying out at the time of Iraq's invasion and occupation of Kuwait leading to the presence of the items of tangible property in Kuwait. The Panel notes a reference in a guarantee which Osman relies upon in its claim for financial losses in paragraphs 102-108, infra, to a contract with the Ministry of Defence of Kuwait (the "Ministry").

96. Osman alleges that as a result of Iraq's invasion and occupation of Kuwait, its tangible property was either destroyed or looted. Osman maintains that it was not possible to protect, remove or relocate the property because of the evacuation of its employees.

97. Osman originally classified the claim for loss of and damage to items and documents as "financial losses", but the claim is more appropriately classified as a claim for tangible property losses.

2. Analysis and valuation

98. Osman provided as evidence of its alleged losses a copy of its letter dated 2 February 1993 to the Egyptian Ministry of Foreign Affairs attaching a copy of the inventory of Osman's property at its branch stores in Kuwait. Osman stated that the inventory was prepared on 9 April 1988. Osman provided no invoices or other independent documentation in support of the alleged losses. It provided no information as to how the property was lost or damaged, or how the alleged loss was linked to Iraq's invasion and occupation of Kuwait.

99. In its reply to the article 34 notification, Osman provided copies of the company's balance sheets for the periods ending 30 June 1989 and 30 June 1990. The only fixed assets with a value on the balance sheet were "means of transport". The amounts stated on the balance sheets do not correspond with the amounts detailed in Osman's undated memorandum.

100. The Panel finds that Osman failed to provide sufficient evidence which demonstrated its title to or right to use the assets, and the value and the presence of the tangible property in Kuwait.

3. Recommendation

101. The Panel recommends no compensation for loss of tangible property.

B. Financial losses

1. Facts and contentions

102. Osman seeks compensation in the amount of KWD 721,386 (USD 2,475,434) for financial losses. The losses represent financing charges allegedly incurred between 2 August 1990 and November 1992 on three letters of guarantee in connection with contracts entered into with the Ministry.

103. Osman alleges that the guarantees should have been cancelled after it completed its contractual obligations to the Ministry. Osman did not state when these obligations were completed. However, according to Osman, the guarantees were not cancelled because Kuwait's banking system was disrupted by Iraq's invasion and occupation of Kuwait.

104. Osman originally classified the claim for financial losses as "financing charges", but they are more appropriately classified as financial losses.

2. Analysis and valuation

105. As evidence of its alleged losses in respect of the guarantees, Osman provided a letter dated 9 September 1989 from the Al-Ahli Bank of Kuwait to Osman, stating that the balance of a guarantee provided by the bank and "credited" to Osman was still enforceable. Osman also provided a letter dated 19 September 1989 from the Ministry to the Al-Ahli Bank requesting the bank to extend the value of the guarantee for a period of three months commencing on 25 September 1989.

106. The evidence provided indicates that Osman concluded work under the contracts well before 2 August 1990. Osman provided no explanation as to why the letters of guarantee were outstanding as of 2 August 1990. Nor did Osman provide any evidence of a connection between financing charges incurred after this date pursuant to the letters of guarantee and Iraq's invasion and occupation of Kuwait. Finally, Osman did not provide evidence of the financing charges that it allegedly incurred.

107. The Panel finds that Osman did not submit sufficient evidence to support its claim for alleged financial losses. Moreover, Osman failed to demonstrate that the alleged losses were suffered as a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

108. The Panel recommends no compensation for financial losses.

C. Other losses

1. Facts and contentions

109. Osman seeks compensation in the amount of KWD 1,330,000 (USD 4,563,891) for other losses. The claim is for the interest on an arbitral award dated 17 June 1989 in favour of Osman against the Ministry. Osman states that it was unable to enforce the award until 5 March 1992.

110. Osman entered into three contracts with the Ministry between 1978 and 1983 for the construction of barracks. There was a dispute between the parties about Osman's alleged delays in completing the work, which resulted in the Ministry's refusal to pay Osman. In 1983, Osman commenced

proceedings against the Ministry, in the total amount of KWD 16,248,708, before the "Board of Arbitration" of Kuwait. On 17 June 1989, the Board of Arbitration issued an award in favour of Osman. The value of the award was KWD 7,000,000, along with the release of a bank guarantee valued at KWD 349,177. In a judgment dated 16 April 1990, the Plenary Court of Justice of Kuwait rejected an appeal by the Ministry.

111. Osman alleges that it was in the process of securing the necessary documentation to enable it to enforce the award when Iraq's invasion and occupation of Kuwait intervened. Osman alleges that Iraq's invasion and occupation of Kuwait prevented it from enforcing the award against the Ministry until 5 March 1992. The Ministry refused to pay interest on the award between 2 August 1990 and 5 March 1992. Osman, therefore, seeks compensation for this interest.

112. Osman originally classified the claim for interest on the award as losses associated with an award, but it is more appropriately classified as other losses.

2. Analysis and valuation

113. As evidence of its alleged losses, Osman provided copies of the award of 17 June 1989, the judgment of the Plenary Court of Justice dated 16 April 1990 and a letter dated 5 May 1990 from the Ministry of Justice of Kuwait confirming the rejection of the Ministry's appeal.

114. The debts which are the subject of the arbitral award arose in 1983. The Board of Arbitration made its award in June 1989 and the Plenary Court rejected the Ministry's appeal on 16 April 1990. The timing of these events indicates that Osman's alleged inability to obtain payment of the award itself until 1992 was not a direct result of Iraq's invasion and occupation of Kuwait. Rather, the delay was due to legal processes in Kuwait between 1983 and 1990. Osman failed to explain the delays in the litigation between 1983 and 1989/1990. Further, Osman did not provide sufficient evidence of its assertion that the reason for its inability to enforce the award following the judgment of 16 April 1990 prior to Iraq's invasion and occupation of Kuwait was its endeavour to secure the necessary documentation.

115. In any event, the Panel also notes that in its reply to the article 34 notification regarding the issue of why the Ministry did not pay interest to Osman on the award, Osman stated that the Ministry had asserted that the delay in implementing payment of the award and associated interest was due to Iraq's invasion and occupation of Kuwait. Further, the Ministry asked Osman to agree to the enforcement of the judgment of 16 April 1990 without payment of the interest which accrued between 16 April 1990 and 5 March 1992, in order to avoid delay in receipt of the principal amount of the award. Osman accepted this proposal. The Panel finds that Osman made a commercial decision not to insist on payment of the interest by the

Ministry in order to secure timely payment of the principal amount of the award.

116. Ultimately, however, the Panel finds that Osman failed to provide evidence of why it was unable to enforce the award of 17 June 1989 or the judgment of 16 April 1990 prior to Iraq's invasion and occupation of Kuwait, thereby failing to establish the requisite causal connection between Osman's loss and Iraq's invasion and occupation of Kuwait.

3. Recommendation

117. The Panel recommends no compensation for other losses.

D. Recommendation for Osman

Table 8. Recommended compensation for Osman

Claim element	Claim amount (USD)	Recommended compensation (USD)
Loss of tangible property	543,034	nil
Financial losses	2,475,434	nil
Other losses	4,563,891	nil
Total	7,582,359	nil

118. Based on its findings regarding Osman's claim, the Panel recommends no compensation.

VII. CAMPENON BERNARD

119. Campenon Bernard, formerly known as Campenon Bernard SGE ("Campenon"), is a partnership with legal personality ("société en nom collectif") organised according to the laws of France, operating in the construction industry.

120. In the "E" claim form, Campenon sought compensation in the amount of KWD 2,532,314 (USD 8,762,478) for other losses. The Panel reclassified the claim for other losses as financial losses, interest and claim preparation costs for the purposes of this report, as follows:

Table 9. Campenon's claim

Claim element	Claim amount (USD)
Financial losses	7,000,000
Interest	1,762,478
Claim preparation costs (no amount specified)	(--)
Total	8,762,478

121. Campenon stated that it has received compensation in the amount of USD 1,201,781 from Credit Agricole Indosuez ("Indosuez"), a French bank. Indosuez was involved in the transaction which Campenon alleges led to losses giving rise to its claim before the Commission. The payment of compensation was made following arbitration proceedings between Campenon's parent company and Indosuez. Campenon did not take this payment into account in its calculation of the total amount of its claim before the Commission.

A. Financial losses

1. Facts and contentions

122. Campenon seeks compensation in the amount of KWD 2,022,958 (USD 7,000,000) for financial losses. The losses were allegedly incurred in connection with a contract to construct the Jahra Ghazali Motorway Project in Kuwait (the "Project"). Campenon alleged that it borrowed Kuwaiti dinar funds in order to finance the Project. It further alleged that in an attempt to repay the monies in 1990, Campenon's parent company, then called Société Générale d'Entreprises ("SGE"), "unknowingly and in good faith" purchased Kuwaiti dinars which had been stolen from Kuwait by the Iraqi forces. The creditor refused to accept the Kuwaiti dinars which were tendered on the basis that they were stolen. Campenon seeks compensation for the value of these Kuwaiti dinars.

123. A chronology of the principal events giving rise to Campenon's claim follows.

(a) Financing of the Project

124. Campenon alleged that it obtained financing for the Project from the National Bank of Kuwait (the "NBK") in the amount of KWD 16,500,000. Campenon states that repayment of KWD 11,000,000 of the borrowed funds was due on 16 August 1990. Repayment of the balance, KWD 5,500,000, was due on 26 May 1992. An important term of the loan agreements required Campenon to repay the loan in Kuwaiti dinars only.

(b) Consequences of Iraq's invasion and occupation of Kuwait for the Kuwaiti monetary system

125. After Iraq's invasion of Kuwait, there was considerable confusion in the financial markets about the ability of Kuwait's primary financial institutions such as the NBK to operate, including their ability to accept repayments of loans.

126. Campenon alleged that on 1 October 1990, the London office of the NBK confirmed that branch offices of the NBK outside of Kuwait were authorised during the period of Iraq's invasion and occupation of Kuwait to discharge international obligations owing to the NBK. It appears from the information provided by Campenon that it was not until this point that Campenon and SGE commenced their efforts to obtain Kuwaiti dinars to repay the NBK. It also appears to the Panel that the NBK advised Campenon that it was prepared to accept early repayment of the monies which were not due until 1992.

(c) Response of Kuwaiti authorities to theft of notes

127. On 7 October 1990, the Amir of Kuwait issued Decree Law No. 2A of 1990 (the "Decree"), wherein he announced Kuwait's intention to 'demonetise' certain Kuwaiti dinar notes in view of the fact that Iraqi occupying forces had stolen those bank notes from the vaults of the Central Bank of Kuwait (the "CBK") and placed them into circulation. The Amir declared that the CBK was not bound to honour such notes. To implement the Decree, the Amir directed the Minister of Finance of Kuwait to determine those serial numbers and denominations of Kuwaiti dinar bank notes which were considered to have been stolen, based on information supplied by the Governor of the CBK. In response to the Decree, the Acting Minister of Finance of Kuwait issued Ministerial Resolution No. 1A/90 on 7 October 1990 (the "First Resolution"). The First Resolution identified the serial numbers of KWD 20, 10 and 5 notes as having been stolen by the Iraqi forces. The First Resolution also indicated that the Kuwaiti dinar notes listed would not be honoured for payment. This consequence was commonly referred to as 'demonetisation' and stolen notes consequently not honoured as 'demonetised notes'.

128. Campenon alleged that the First Resolution did not provide any notice with respect to Kuwaiti dinar notes of other denominations, including one dinar notes.

(d) SGE's purchase of Kuwaiti dinar notes

129. In November 1990, SGE purchased approximately 16,500,000 Kuwaiti dinars from a number of sellers in order to satisfy Campenon's obligations to the NBK. The dinars were denominated in 20, 10, 5, 1, ½ and ¼ dinar bank notes. An amount of KWD 3,000,000 in one Kuwaiti dinar notes was purchased from the Geneva branch of Indosuez. Campenon's claim concerns the dinars purchased from Indosuez.

130. The transaction leading to the purchase from Indosuez was initiated when SGE, Indosuez and several companies incorporated in the United Kingdom signed a series of agreements for the purchase of Kuwaiti dinars (the "Purchase Agreements") in November 1990. Each of the agreements contained a similar warranty clause in the following terms:

> "The Supplier of the Kuwait Dinar [sic] has warranted to [Indosuez]...that all of the Kuwaiti Dinars which will be offered for sale pursuant to this sale agreement were valid legal tender in the Kingdom of Kuwait prior to the invasion of such country by the Republic of Iraq in August 1990, and in particular warrants that none of the Kuwaiti Dinars bear serial numbers relating to currency notes which have been disowned by the Kuwaiti Government-in-exile all as more fully set forth in Exhibit Two to this Agreement"

131. One of the companies incorporated in the United Kingdom agreed to act as intermediary and purchase the notes from Indosuez and then resell them to SGE through intermediaries. SGE and one of the other intermediaries guaranteed the company's obligations pursuant to a Security Agreement.

132. The Purchase Agreements included an exhibit that listed the Kuwaiti dinars which had been demonetised by the Kuwaiti Government-in-exile. In particular, the exhibit identified the series of 10, 20, and 50 dinar notes which had been demonetised by the Kuwaiti Government in the First Resolution. The Panel observes that in fact, the series of 50 dinar notes actually referred to five dinar notes.

133. The transaction at issue before the Panel is the delivery on 27 November 1990 of notes in the amount of 3,000,000 dinars to Campenon at the Geneva office of Indosuez. All of the dinars were in the form of one dinar notes. Campenon/SGE appear to have purchased the notes at this time. Campenon did not state what price it paid for the notes.

134. Campenon conceded that it was aware of the Decree and the First Resolution of 7 October 1990 and as such, Campenon/SGE made every effort to ensure that 20, 10 and 5 Kuwaiti dinar notes purchased in November 1990

were not among those identified in the First Resolution. Campenon further stated that, with the assistance of Indosuez, it checked with numerous Kuwaiti governmental sources and European central and private banking sources to ensure that no demonetisation had been announced with respect to smaller denomination notes.

135. Accordingly, Campenon stated that it and SGE believed in good faith that the amount of KWD 3,000,000 in one dinar notes, which Campenon/SGE purchased on 27 November, were valid notes.

(e) The Second Resolution

136. On 28 November 1990, the acting Minister of Finance of Kuwait issued a second Ministerial Resolution (the "Second Resolution"). The Second Resolution identified a series of one Kuwaiti dinar notes as having been stolen by the Iraqi forces, which included a large proportion of the notes purchased by Campenon/SGE on 27 November 1990. Campenon said it did not become aware of the Second Resolution until mid-April 1991.

(f) Campenon's attempt to repay loan

137. Campenon tendered the amount of approximately KWD 16,500,000 to the NBK in London in December 1990. The NBK refused to accept the payment.

138. Campenon alleged that by a letter dated 7 January 1991, the NBK informed Campenon that the CBK had denied the NBK the authority to accept the currency tendered to the NBK by Campenon. It appears that the NBK and the CBK considered that some or all of the Kuwaiti notes tendered to the NBK were stolen.

139. In March 1991, the Kuwaiti Government enacted an exchange program for its old currency which was publicised in an announcement by the CBK. All old Kuwaiti dinars were turned into the CBK in exchange for newly issued Kuwaiti dinars. The old Kuwaiti dinars, which were identified by the CBK as stolen, were cancelled. Campenon alleged that the announcement referred to a "decree" and that this decree listed, for the first time, serial numbers for cancelled one dinar notes. The Panel has reviewed the announcement and concludes that the decree referred to is the Second Resolution.

140. Campenon transferred the Kuwaiti dinar notes it was holding to the Bank of Kuwait and the Middle East, a subsidiary of the NBK, for tender to the NBK. Campenon alleged that following the liberation of Kuwait, the NBK accepted KWD 14,608,717 of the tendered notes but informed Campenon that notes in the amount of KWD 2,024,779 were cancelled because they were among those notes demonetised by the Kuwaiti authorities. KWD 2,022,958 of the amount of KWD 2,024,779 was denominated in cancelled one dinar notes.

(g) Legal proceedings between Campenon and the NBK

141. Campenon alleged that the NBK refused to accept the cancelled Kuwaiti one dinar notes in payment for its debt. As such, if the NBK's stance was correct, the demonetised Kuwaiti dinars totalling KWD 2,022,958 were rendered worthless. Campenon brought proceedings against the NBK in the Tribunal de Commerce de Paris in September 1992. In those proceedings, Campenon sought an order compelling the NBK to accept the demonetised Kuwaiti dinars. The NBK brought parallel litigation in Kuwait against SGE in October 1992 seeking payment of the outstanding amount.

142. The parties settled their respective proceedings pursuant to an Amicable Settlement dated 5 December 1994. The principal term of this document was SGE's agreement to pay to the NBK the amount of USD 7,000,000 representing the outstanding amount due to the NBK. This figure was agreed to represent the United States dollar equivalent of KWD 2,022,958.

(h) Arbitral proceedings between SGE and Indosuez

143. SGE then sought to recover its alleged losses by commencing an arbitral proceeding against Indosuez before a tribunal of the ICC International Court of Arbitration in 1996 (the "ICC Tribunal").

144. SGE alleged before the Tribunal that virtually all of the one dinar notes that it purchased and which the NBK refused to accept were part of the delivery from Indosuez on 27 November 1990. SGE alleged that Indosuez was responsible for having supplied stolen notes and, as a result, sought damages for breach of contract.

145. The ICC Tribunal made an award in 1998 in which it ordered Indosuez to pay SGE the amount of USD 1,000,000 plus interest at 5 per cent per annum for the breach of contract by Indosuez. It appears that Indosuez paid Campenon this amount of the award (USD 1,201,781). Campenon did not take this payment into account in the calculation of the total amount of its claim before the Commission.

2. Analysis and valuation

146. As evidence of its alleged losses, Campenon provided, inter alia, the following documents: copies of the loan agreements between itself and the NBK; correspondence with NBK; correspondence with the British Bankers' Association; the Decree; the First Resolution; the Amicable Settlement; the award of the ICC Tribunal; the Security Agreement; the Purchase Agreements; and confirmation of receipt from Indosuez of the quantity and authenticity of bank notes.

147. In the article 34 notification, Campenon was asked to provide all correspondence or notes of dealings between Campenon and Indosuez during the key period between October and December 1990. Campenon did not provide all of the information requested. It did provide evidence confirming the

delivery date of the demonetised notes. It did not provide sufficient evidence to assess the actual purchase price of the demonetised notes which SGE purchased.

148. The Panel finds that there is substantial general evidence of theft of Kuwaiti dinars from the CBK, and substantial evidence specific to this claim, to establish that the Kuwaiti dinars for which Campenon seeks compensation were stolen by the Iraqi forces from the CBK.

149. Nevertheless, the fact that the stolen currency was ultimately purchased by Campenon/SGE does not mean that the loss is directly related to Iraq's invasion and occupation of Kuwait. Indeed, the Panel finds that the loss is not a direct loss, for the following reasons.

150. Firstly, the Panel finds it significant that the demonetised notes were purchased through a lengthy chain of sales and purchases, including the involvement of several intermediaries, following the theft of the notes from Kuwait. Once Indosuez expressed its interest (on behalf of SGE) in purchasing the relevant Kuwaiti dinars, the dinars were sold and transported to a bank in Switzerland. Following the purchase and sale of the Kuwaiti dinars by a number of other entities, the final purchaser (i.e., SGE) was a French company.

151. Secondly, SGE's purchase of the notes appears to have occurred a significant period of time after the theft of the Kuwaiti dinars, and in particular, well after the financial community became aware generally of the large-scale theft of Kuwaiti dinars by the Iraqi forces.

152. Finally, SGE, a large multi-national company, acting on behalf of Campenon, willingly purchased the notes in Switzerland. The loss could only have occurred as a result of SGE's independent decision to purchase a large sum of Kuwaiti dinars at a time when there was a substantial general risk for any purchaser. This is reinforced by the restricted terms of the warranty given by each seller in the Purchase Agreements.

153. The Panel acknowledges that while the NBK's insistence on payment in Kuwaiti dinars at a time when the currency was in short supply placed SGE in a difficult position, the entire transaction was inherently risky. The Panel finds that SGE should have been aware of the risk in buying the notes at a time when it knew, on the basis of the First Resolution and as a result of its enquiries of relevant governmental and banking agencies, that there had been a widespread theft of Kuwaiti dinars from Kuwait. Moreover, the arrival of the notes in Switzerland was considerably removed in time, place and circumstances from the theft of the notes in Kuwait.

154. The Panel consequently finds that Campenon failed to establish that its losses were directly caused by Iraq's invasion and occupation of Kuwait.

155. The Panel records the fact that Campenon did not advise the Panel as to the purchase price paid by SGE for the demonetised notes. It has not been possible to establish the price from the limited evidence provided. It is therefore possible that the compensation received from Indosuez represents the entire amount of SGE's (and therefore Campenon's) loss.

3. Recommendation

156. The Panel recommends no compensation for financial losses.

B. Interest

157. As the Panel recommends no compensation for financial losses, there is no need for the Panel to determine the date of loss from which interest would accrue.

C. Claim preparation costs

158. Campenon seeks compensation for "reasonable attorney fees". In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs at a future date. Accordingly, the Panel takes no action with respect to the claim by Campenon for such costs.

D. Recommendation for Campenon

Table 10. Recommended compensation for Campenon

Claim element	Claim amount (USD)	Recommended compensation (USD)
Financial losses	7,000,000	nil
Interest	1,762,478	nil
Claim preparation costs (no amount specified)	(--)	nil
Total	8,762,478	nil

159. Based on its findings regarding Campenon's claim, the Panel recommends no compensation.

VIII. BRÜCKNER GRUNDBAU GMBH

160. Brückner Grundbau GmbH ("Brückner") is a corporation organised according to the laws of Germany operating in the construction industry.

161. In the "E" claim form, Brückner sought compensation in the amount of KWD 1,144,742 (USD 3,961,045) for contract losses and loss of tangible property. These loss elements do not correspond with the loss elements contained in a document attached to the "E" claim form, which sets out a valuation of Brückner's losses (the "valuation sheet"). The Panel notes that Brückner's claim suffers from substantial formal deficiencies, including an insufficiently detailed Statement of Claim and voluminous untranslated documents. These deficiencies made it difficult to assess the nature of the claim and the evidence provided in support of the claim.

162. Brückner has received compensation from Hermes Kreditversicherungs-AG, the German export credit insurance corporation, in the amount of 3,284,468 Deutsche Mark (DEM). However, it does not appear that Brückner has reduced its claim to reflect this compensation.

163. On the basis of the information provided, the Panel has reclassified elements of Brückner's claim for the purposes of this report. The Panel therefore considered the amount of KWD 1,144,742 (USD 3,961,045) for contract losses, loss of tangible property, payment or relief to others, financial losses, other losses and interest, as follows:

Table 11. Brückner's claim

Claim element	Claim amount (USD)
Contract losses	157,786
Loss of tangible property	2,127,705
Payment or relief to others	112,292
Financial losses	688,982
Other losses	280,301
Interest	593,979
Total	3,961,045

A. Contract losses

1. Facts and contentions

164. Brückner seeks compensation in the amount of KWD 45,600 (USD 157,786) for contract losses allegedly incurred in connection with remedial work relating to two contracts, RA/157 and RA/207, which were contracts for the construction of motorways in Kuwait. Brückner was engaged as a sub-

contractor to Hyundai Engineering and Construction Limited ("Hyundai"), a Korean contractor. Brückner states that it was carrying out works for Hyundai at the time of Iraq's invasion and occupation of Kuwait. It is not clear when Brückner performed the work for which it seeks compensation, although Brückner referred without explanation to a period between April and September 1992, prior to entering into a new sub-contract with Hyundai.

165. Brückner did not explain the nature of the remedial works. Further, Brückner did not demonstrate that it was required to perform the works or explain why it was not paid for such works.

166. Brückner originally classified the claim for contract losses in its valuation sheet as "remedial works", but the losses are more appropriately classified as contract losses.

2. Analysis and valuation

167. Brückner provided as evidence of its alleged losses a copy of a sub-contract with Hyundai dated 29 November 1992. The sub-contract relates to contract RA/410, a contract for the construction of a motorway in Kuwait. Brückner failed to explain the connection of this sub-contract to contracts RA/157 and RA/207, although minutes of meetings between representatives of Brückner and Hyundai in August 1992 provided by Brückner indicate that contract RA/410 replaced contracts RA/157 and RA/207. Brückner also provided copies of "statements of cost" from 2 August 1990 to 30 September 1992 and various invoices. All of the statements and invoices provided by Brückner are dated subsequent to 2 March 1991.

168. The Panel finds that Brückner did not demonstrate that its losses were the direct result of Iraq's invasion and occupation of Kuwait, by, for example, demonstrating that the failure of Hyundai to pay the amounts due and owing was attributable to Hyundai being rendered insolvent or liquidated as a direct result of Iraq's invasion and occupation of Kuwait, or that Hyundai was otherwise entitled to refuse to pay Brückner.

3. Recommendation

169. The Panel recommends no compensation for contract losses.

B. Loss of tangible property

1. Facts and contentions

170. Brückner seeks compensation in the amount of KWD 614,907 (USD 2,127,705) for loss of tangible property. The claim is for the alleged loss of equipment, spare parts and materials.

171. Brückner alleges that its equipment, plant and materials in Kuwait were damaged, lost and destroyed. However, Brückner failed to provide any

detail with respect to the facts and circumstances surrounding the alleged losses.

172. Brückner originally classified the claim for tangible property losses in its valuation sheet as "values of main equipment/spares and materials being lost", but the losses are more appropriately classified as tangible property losses.

2. Analysis and valuation

173. Brückner provided as evidence of its alleged loss of equipment two schedules, which related to each of contracts RA/157 and RA/207 respectively. These documents were generated specifically for the claim submission. In relation to its alleged loss of spare parts and materials, Brückner calculated the value of the spare parts and materials by taking its inventory as at 31 December 1989 and adding the spare parts and materials shipped into or purchased in Kuwait to provide a total figure as of 2 August 1990. Brückner provided computer printouts dated 12 January 1990 in support of the inventory figures. However, the printouts are in German and no translation was submitted.

174. The Panel finds that Brückner failed to provide sufficient evidence which demonstrated its title to or right to use the assets. The Panel further finds that Brückner failed to explain how its alleged losses were the direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

175. The Panel recommends no compensation for loss of tangible property.

C. Payment or relief to others

1. Facts and contentions

176. Brückner seeks compensation in the amount of KWD 32,452 (USD 112,292) for payment or relief to others. The claim is for the alleged cost of repatriating staff who were held hostage and detained in Iraq for several months.

177. Brückner did not provide any other details regarding its alleged loss.

178. Brückner originally classified the claim for payment or relief to others in its valuation sheet as "salary costs during hostage period", but the losses are more appropriately classified as payment or relief to others.

2. Analysis and valuation

179. Brückner did not provide any translated evidence regarding its alleged loss.

180. The Panel finds that Brückner failed to provide sufficient information and evidence to substantiate its claim.

3. Recommendation

181. The Panel recommends no compensation for payment or relief to others.

D. Financial losses

1. Facts and contentions

182. Brückner seeks compensation in the amount of KWD 199,116 (USD 688,982) for financial losses in connection with interest on the late payment of contractual amounts, interest on blocked funds, and bank charges for contractual bonds relating to contracts RA/157 and RA/207.

2. Analysis and valuation

(a) Interest on late payment and blocked funds

183. Brückner seeks compensation in the amount of KWD 195,134 for interest on monies owed to it by Hyundai and on funds blocked in bank accounts in Kuwait and offshore.

184. In support of its claim for interest on late payment, Brückner provided some evidence that it was owed contractual amounts by Hyundai as at August 1992. However, it provided no evidence of the dates of performance of the work to which the debts relate. It also failed to explain or substantiate the 12 per cent rate of interest that it used to calculate the claim.

185. In relation to the claim for interest on the blocked funds in Kuwait, Brückner provided evidence of its account balance as of 31 July 1990. However, it failed to explain when the funds were released and it did not substantiate the 12 per cent interest rate that the calculation is based upon. Brückner did not explain why it did not receive interest subsequent to the liberation of Kuwait.

186. In relation to the claim for interest on blocked funds held offshore, Brückner provided evidence of a deposit made on 31 July 1990 and some untranslated evidence which shows the subsequent release of these funds. However, Brückner did not provide evidence to substantiate the 12 per cent rate of interest used to calculate its claim.

(b) Bonds and guarantees

187. Brückner seeks compensation in the amount of KWD 3,982 in relation to charges arising out of performance bonds and advance payment guarantees for contracts RA/157 (KWD 1,537) and RA/207 (KWD 2,445).

188. An internally produced document indicates that the performance bond relating to contract RA/157 was valid for the period 2 August 1990 to 25 February 1992. The outstanding charges in relation to this performance bond are KWD 1,211. The outstanding charges for the advance payment guarantee for the same contract and for the same period are KWD 326.

189. The same document indicates that the performance bond relating to contract RA/207 was valid for the period 2 August 1990 to 24 January 1992. The outstanding charges in relation to this performance bond are KWD 1,573. The outstanding charges for the advance payment guarantee for the same contract for the period 2 August 1990 to 25 February 1992 are KWD 872.

190. Brückner did not provide translated evidence regarding its alleged losses, such as evidence of payment of the charges.

191. The Panel finds that Brückner did not submit sufficient evidence to support its claim for financial losses. In any event, the alleged losses relating to contracts RA/157 and RA/207 are not compensable because the Panel has determined in paragraph 168, supra, that Brückner failed to establish that the underlying contract losses which gave rise to the financial losses alleged were the direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

192. Based on its findings in paragraph 191, supra, the Panel recommends no compensation for financial losses.

E. Other losses

1. Facts and contentions

193. Brückner seeks compensation in the amount of KWD 81,007 (USD 280,301) for other losses, including "miscellaneous sundry costs", allegedly incurred in relation to the RA/157 and RA/207 contracts. Brückner seeks compensation for costs incurred during the period 2 August 1990 to 30 September 1991.

2. Analysis and valuation

194. Brückner provided as evidence of its alleged losses a statement of costs incurred from August 1990 to September 1992 for each contract. Apart from the initial period, the costs are split between wages, salaries, building materials, plant and equipment, sub-contractor costs and additional overhead costs. Brückner also provided detailed backing schedules and copy information which can be partially linked to the statements of costs. Not all of the amounts claimed are clear, as the detailed information has not been cross-referenced to the statements of costs. In addition, some invoices are poor photocopies and are therefore illegible. Further, many documents have not been translated into English.

195. The Panel recommends no compensation for other losses as Brückner failed to provide sufficient evidence of the alleged losses.

3. Recommendation

196. The Panel recommends no compensation for other losses.

F. Interest

197. As the Panel recommends no compensation, there is no need for the Panel to determine the date of loss from which interest would accrue.

G. Recommendation for Brückner

Table 12. Recommended compensation for Brückner

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	157,786	nil
Loss of tangible property	2,127,705	nil
Payment or relief to others	112,292	nil
Financial losses	688,982	nil
Other losses	280,301	nil
Interest	593,979	nil
Total	3,961,045	nil

198. Based on its findings regarding Brückner's claim, the Panel recommends no compensation.

IX. TECHNIKA HUNGARIAN FOREIGN TRADING COMPANY

199. Technika Hungarian Foreign Trading Company ("Technika") is a state-owned corporation organised according to the laws of Hungary. Technika operates in the construction industry. It is claiming compensation on behalf of itself and a wholly owned subsidiary, the Uniform Joint Stock Company.

200. In the "E" claim form, Technika sought compensation in the amount of KWD 119,831 (USD 414,640) for contract losses and loss of tangible property.

201. In its reply to the article 15 notification, Technika appeared to amend the amounts claimed to KWD 86,625 and USD 119,047. Neither the purpose nor the scope of the amendment were clear from the translation provided by Technika. The Panel has only considered those losses contained in the original claim except where such losses have been withdrawn or reduced by Technika. Where Technika reduced the amount of losses in its reply to the article 15 notification, the Panel has considered the reduced amount.

202. The Panel has reclassified elements of Technika's claim for the purposes of this report. The Panel therefore considered the amount of KWD 119,831 (USD 414,640) for contract losses, loss of profits and loss of tangible property, as follows:

Table 13. Technika's claim

Claim element	Claim amount (USD)
Contract losses	80,623
Loss of profits	41,263
Loss of tangible property	292,754
Total	414,640

A. Contract losses

1. Facts and contentions

203. Technika seeks compensation in the amount of KWD 23,300 (USD 80,623) for contract losses allegedly incurred in connection with a contract dated 30 March 1988 with Messrs. Adeeb Fahad S. Al-Tukhaim General Trading and Contracting Establishment of Kuwait ("Fahad"). The contract provided for the drilling of 72 water wells at Warfa, Kuwait.

204. The value of the contract was KWD 165,600. Technika alleges that as of the date of Iraq's invasion and occupation of Kuwait, it had completed the drilling of 26 wells with a value of KWD 35,180. It appears from the

limited information provided by Technika that Fahad made a partial payment to Technika in the amount of KWD 11,880 for the work that it had performed. Technika seeks the outstanding amount of KWD 23,300.

205. In its original claim submission, Technika sought compensation in the amount of KWD 35,225 for contract losses. However, a review of the claim revealed that the amount of KWD 11,925 should be classified as loss of profits. The balance of KWD 23,300 is dealt with under this section.

2. Analysis and valuation

206. The contract states that the works were to be completed within one year of the date of the commencement of work. The work was to commence on 28 June 1988. Therefore, the work under the contract was to be completed by 28 June 1989.

207. Technika provided 12 invoices, all dated 11 January 1990, which it asserts were unpaid. All of the invoices indicate that the work had been carried out in 1989. Technika provided no evidence that the contract period had been extended beyond 28 June 1989.

208. The amounts allegedly owing were long outstanding as at 2 August 1990. Technika provided no explanation for the delay in payment. The Panel, therefore, finds that Technika failed to demonstrate that the failure of Fahad to pay the amounts due and owing was a direct result of Iraq's invasion and occupation of Kuwait.

209. The Panel finds that Technika did not demonstrate that its alleged losses were the direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

210. The Panel recommends no compensation for contract losses.

B. Loss of profits

1. Facts and contentions

211. Technika seeks compensation in the amount of KWD 11,925 (USD 41,263) for loss of profits. Technika's claim is for "losses sustained resulting from the misscarrying (sic) of the contract". This represents the profit which Technika had to forego when it had to cease "the deliveries for the contract". While it is not clear which contract or which deliveries Technika is referring to, the Panel assumes that the contract referred to is the well drilling contract. Technika's claim is based on an 8.5 per cent rate of profitability.

212. Technika originally classified the claim for loss of profits as "contract losses", but the losses are more appropriately classified as loss of profits.

2. Analysis and valuation

213. The requirements to substantiate a loss of profits claim have been stated by the Panel in paragraphs 16 and 17, supra.

214. Technika was asked in the article 34 notification to provide evidence in support of its claim for loss of profits. Technika did not reply to the article 34 notification.

215. The Panel recommends no compensation as Technika failed to provide any evidence to substantiate its loss of profits claim.

3. Recommendation

216. The Panel recommends no compensation for loss of profits.

C. Loss of tangible property

1. Facts and contentions

217. Technika seeks compensation in the amount of KWD 84,606 (USD 292,754) for loss of tangible property. The claim is for the alleged loss of drilling equipment, furniture and a car in Kuwait at the time of Iraq's invasion and occupation of Kuwait. Technika also seeks compensation for the transportation costs of the furniture to Kuwait.

218. Technika alleges that as a result of Iraq's invasion and occupation of Kuwait, its drilling equipment, which was in Kuwait for use on the well drilling contract, was destroyed. Technika states that the equipment was valued at KWD 50,000.

219. In relation to the furniture and transportation costs, Technika alleges that it entered into a contract with Fahad for the marketing of "various furniture". Under the terms of the contract, Technika retained title to the furniture until it was sold. Technika alleges that the goods were shipped from the Yugoslavian port of Koper to Kuwait on 16 May 1990. The furniture was received and stored. However, Technika alleges that as a result of Iraq's invasion and occupation of Kuwait, the furniture was later destroyed. Technika seeks compensation in the amount of KWD 22,554 for the loss resulting from the destruction of the furniture. In addition, Technika seeks compensation in the amount of KWD 10,652 (expressed in the invoices as 2,495,436 forint (HUG)), which represents the cost of transporting the furniture to Kuwait.

220. Technika seeks compensation in the amount of KWD 1,400 for the loss of a car. Technika alleges that the car disappeared during Iraq's invasion and occupation of Kuwait.

2. Analysis and valuation

(a) Drilling equipment

221. As evidence of its title to the drilling equipment, Technika provided a copy of a certificate of insurance dated 15 April 1988, relating to the shipment of the drilling equipment and accessories. The amount insured was KWD 50,000. Technika also provided a copy of the drilling contract. Further, it provided the original invoices for the equipment dated 28 June 1988. The total value of the invoices was KWD 50,000.

222. As evidence of the presence of the drilling equipment in Kuwait at the time of Iraq's invasion and occupation of Kuwait, Technika provided a letter from its Kuwaiti partner (which appears to have been Fahad, trading under a different name) to the Hungarian Embassy in Kuwait dated 6 May 1993. The letter states that Technika's furniture, drilling equipment and tools were found to be missing upon the resumption of activities after the liberation of Kuwait.

223. The Panel finds that Technika provided sufficient evidence of its title to or right to use, and the presence in Kuwait of, the drilling equipment. The Panel also finds that the letter dated 6 May 1993 is sufficient evidence that the drilling equipment was lost as a result of Iraq's invasion and occupation of Kuwait.

224. In relation to the value of the drilling equipment, the certificate of insurance referred to in paragraph 221, supra, has expired. It therefore provides no realistic guideline as to the value of the drilling equipment, because the equipment would be expected to depreciate significantly during the course of the project. The contract appears to contemplate the return of the drilling equipment to Hungary after the conclusion of the drilling, which suggests it may have had some value at that time. The Panel requested its expert consultants to perform a valuation of the loss. The Panel's expert consultants applied depreciation rates appropriate for drilling equipment and concluded that the equipment had a value of KWD 26,750 (USD 92,561) as at 2 August 1990. The Panel accepts this valuation.

225. The Panel recommends compensation in the amount of KWD 26,750 (USD 92,561) for the drilling equipment.

(b) Furniture and transportation costs

226. Technika provided as evidence of its title to the furniture a copy of a letter which references a letter of guarantee in the amount of USD 100,000, established to cover the consignment contract for the furniture. The guarantee expired on 31 December 1990. Technika also provided: a bill of lading dated 16 May 1990 relating to the shipment of the furniture to Kuwait; three invoices and a debit memorandum relating to

the furniture, all of which are dated 6 May 1990; and a series of shipment invoices dated 2 April 1990 from Technika to Fahad.

227. As evidence of the presence of the furniture in Kuwait at the time of Iraq's invasion and occupation of Kuwait, Technika provided the letter from its Kuwaiti partner referred to in paragraph 222, supra.

228. The Panel finds that Technika provided sufficient evidence of its title to or right to use, and the presence in Kuwait of, the furniture. The Panel also finds that the letter dated 6 May 1993 is sufficient evidence that the furniture was lost as a result of Iraq's invasion and occupation of Kuwait.

229. In the absence of any evidence that Fahad sold any items of furniture, the Panel is satisfied that Technika retained title to the furniture and that the furniture had the claimed value.

230. Technika provided satisfactory evidence of the amount of the transportation costs in the form of transport invoices for the furniture. The costs consist of international ocean freight charges, and domestic transport charges after the furniture reached Kuwait. The Panel considers that Technika would have taken these costs into account in setting prices for the furniture for sale in the Kuwaiti market. As such, the Panel is satisfied that these costs represent a loss suffered as a direct result of Iraq's invasion and occupation of Kuwait.

231. The Panel recommends compensation in the amount of KWD 22,554 (USD 78,042) for the furniture and KWD 10,652 (USD 36,858) for the furniture transportation costs.

(c) Car

232. Technika provided a certificate dated 22 May 1993 from Al-Imad Real Estate K.S.C.C., the company from which Technika rented a villa in Kuwait. The certificate states, "white Buick car with-out plate No.s owned by the tenant was lost from the parking place of the bldg.". Technika did not provide any other evidence in relation to the car. Technika provided no evidence dated prior to 2 August 1990 that it owned the car.

233. The Panel finds that Technika failed to provide sufficient evidence which demonstrated its title to or right to use, and the value and the presence in Kuwait of, the car.

234. The Panel recommends no compensation for the car.

3. Recommendation

235. The Panel recommends compensation in the amount of USD 207,461 for loss of tangible property.

D. Recommendation for Technika

Table 14. Recommended compensation for Technika

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	80,623	nil
Loss of profits	41,263	nil
Loss of tangible property	292,754	207,461
Total	414,640	207,461

236. Based on its findings regarding Technika's claim, the Panel recommends compensation in the amount of USD 207,461. The Panel finds the date of loss to be 2 August 1990.

X. TRANSINVEST ENGINEERING AND CONTRACTING LIMITED

237. Transinvest Engineering and Contracting Limited ("Transinvest") is a corporation organised according to the laws of Hungary operating in the construction industry.

238. In the "E" claim form, Transinvest sought compensation in the amount of KWD 117,669 (USD 407,159) for contract losses, real property losses, tangible property losses and other losses (cost of evacuation).

239. The Panel has reclassified elements of Transinvest's claim for the purposes of this report. The Panel therefore considered the amount of KWD 117,669 (USD 407,159) for loss of profits, loss of tangible property and payment or relief to others, as follows:

Table 15. Transinvest's claim

Claim element	Claim amount (USD)
Loss of profits	181,661
Loss of tangible property	219,128
Payment or relief to others	6,370
Total	407,159

A. Loss of profits

1. Facts and contentions

240. Transinvest seeks compensation in the amount of KWD 52,500 (USD 181,661) for loss of profits. The claim relates to contracts under which it was performing work, or under which it was about to commence work, or which it was in the process of negotiating, at the time of Iraq's invasion and occupation of Kuwait. Transinvest alleges that it made preparations for, and purchased necessary machines and materials in relation to, these contracts. Transinvest estimated its loss upon termination of the contracts to be KWD 52,500. This figure is based on a 15 per cent profit margin for the total value of the contracts of KWD 350,000.

241. Transinvest originally classified the claim for the costs arising out of the termination of the contracts as "contract losses", but the losses are more appropriately classified as loss of profits.

2. Analysis and valuation

242. The requirements to substantiate a loss of profits claim have been stated by the Panel in paragraphs 16 and 17, supra.

243. Transinvest provided no evidence to support its claims in relation to loss of profits. Transinvest was requested in the article 34 notification to submit evidence such as the contracts, audited financial statements, budgets, management accounts or turnover prepared by or on behalf of Transinvest. It failed to do so. The Panel finds that Transinvest provided insufficient evidence to substantiate its alleged loss.

3. Recommendation

244. The Panel recommends no compensation for loss of profits.

B. Loss of tangible property

1. Facts and contentions

245. Transinvest seeks compensation in the amount of KWD 63,328 (USD 219,128) for loss of tangible property. The claim is for the alleged loss of machinery and equipment and other tangible property delivered to the Fahahil Expressway project site in Kuwait.

246. Transinvest originally classified an alleged loss in the amount of KWD 60,364 as "real property losses", but the losses are more appropriately classified as tangible property losses. The Panel has therefore considered these losses, together with the balance of KWD 2,964, which was classified in Transinvest's original claim submission as loss of tangible property, as tangible property losses.

247. Transinvest alleges that its property was destroyed during Iraq's invasion and occupation of Kuwait. Transinvest provided no other information or evidence regarding the alleged circumstances of the loss or destruction of the tangible property.

2. Analysis and valuation

248. The Panel finds that Transinvest did not submit any evidence which demonstrated its title to or right to use the assets, and the value and the presence of the tangible property in Kuwait. The Panel finds that Transinvest failed to submit sufficient evidence to substantiate its loss of tangible property claim.

3. Recommendation

249. The Panel recommends no compensation for loss of tangible property.

C. Payment or relief to others

1. Facts and contentions

250. Transinvest seeks compensation in the amount of KWD 1,841 (USD 6,370) for payment or relief to others. The claim is for the alleged costs of evacuating its staff and their families from Kuwait to Hungary during

Iraq's invasion and occupation of Kuwait. The evacuation took place with the help of the Hungarian Ministry of Foreign Affairs.

251. Transinvest provided no other information regarding its claim for payment or relief to others.

2. Analysis and valuation

252. Transinvest provided as evidence of its alleged losses a letter/invoice from the Hungarian Ministry of Foreign Affairs asking Transinvest to transfer to the bank account of the Ministry of Foreign Affairs the amount of HUG 492,621, for the cost of air tickets of the Hungarian expatriates evacuated from Kuwait in 1990. Transinvest did not provide any proof that it in fact paid the amounts claimed. The Panel finds that Transinvest provided insufficient information and evidence to substantiate its alleged loss.

3. Recommendation

253. The Panel recommends no compensation for payment or relief to others.

D. Recommendation for Transinvest

Table 16. Recommended compensation for Transinvest

Claim element	Claim amount (USD)	Recommended compensation (USD)
Loss of profits	181,661	nil
Loss of tangible property	219,128	nil
Payment or relief to others	6,370	nil
Total	407,159	nil

254. Based on its findings regarding Transinvest's claim, the Panel recommends no compensation.

XI. ASSOCIATED CONSULTING ENGINEERS S.A.L.

255. Associated Consulting Engineers S.A.L. ("ACE") is a corporation organised according to the laws of Lebanon. ACE seeks compensation in relation to losses which its Kuwait branch allegedly suffered as a result of Iraq's invasion and occupation of Kuwait. ACE's Kuwait branch is involved in engineering design and the supervision of a wide variety of civil, architectural and town planning projects in Kuwait.

256. In the "E" claim form, ACE sought compensation in the amount of KWD 497,416 (USD 1,721,162) for contract losses, loss of tangible property, payment or relief to others and other losses. It also sought interest in the accompanying Statement of Claim.

257. The Panel has reclassified elements of ACE's claim for the purposes of this report. The Panel therefore considered the amount of KWD 497,416 (USD 1,721,162) for contract losses, loss of tangible property, loss of intangible property, payment or relief to others, other losses, interest and claim preparation costs, as follows:

Table 17. ACE's claim

Claim element	Claim amount (USD)
Contract losses	752,509
Loss of tangible property	55,163
Loss of intangible property	86,505
Payment or relief to others	24,221
Other losses	797,574
Interest (no amount specified)	(--)
Claim preparation costs	5,190
Total	1,721,162

A. Contract losses

1. Facts and contentions

258. ACE seeks compensation in the amount of KWD 217,475 (USD 752,509) for contract losses allegedly incurred in connection with three construction contracts. The first contract was with the Ministry of Public Works of Kuwait (the "Ministry"), for the supervision of part of a project for the cleaning and renovation of a sewerage system (the "CCTV Project"). The second contract was also with the Ministry and was for the assessment and upgrading of a sewage treatment plant (the "Ardiyah Project"). The third contract was with the Roads and Bridges Public Corporation of the

Government of the Republic of Sudan (the "Roads Corporation"), for the design of roads in Sudan (the "Roads Project").

259. ACE alleges that its work on the CCTV Project was disrupted by Iraq's invasion and occupation of Kuwait. ACE's work on the Ardiyah Project appears to have been completed shortly before 2 August 1990. ACE's work on the Roads Project was completed in 1989.

(a) The CCTV Project

260. The CCTV Project was a substantial sewerage system cleaning and renovation project carried out in Kuwait City over a number of years starting in 1987. A number of design consultants (engineers) and contractors were involved in the various phases and geographical sectors of the project works.

261. Under a contract dated 25 July 1987, the Ministry appointed ACE, along with a joint venture partner, Pan Arab Consulting Engineers ("PACE"), and a company incorporated in the United States of America called CH2M Hill, as consultants to supervise certain aspects and phases of the CCTV Project. ACE makes no claim before the Commission on behalf of PACE or CH2M Hill.

262. ACE carried out survey and design works between 1987 and 1989 under the contract and was paid for those works. ACE asserts that a part of the CCTV Project called "Phase II Part A" was due to start in August 1990. ACE was required to supervise the work of a contractor which would be carrying out improvements to the sewerage system. ACE states that in May 1990, it designed tender documents on behalf of the Ministry for contractors to bid for the construction work. ACE asserts that the Ministry did not pay ACE for this work. ACE also asserts that it had already employed and paid staff for the month of August 1990 in preparation for the commencement of Phase II Part A.

263. ACE alleges that the contract works did not commence in August 1990 due to Iraq's invasion and occupation of Kuwait. Phase II Part A of the CCTV Project eventually commenced in June 1992.

264. ACE seeks compensation in the amount of KWD 16,175 for the "mobilisation cost" of Phase II Part A of the CCTV Project, being the salaries which it paid its employees in August 1990 and the tender evaluation costs it incurred in May 1990.

(b) The Ardiyah Project

265. Under a contract with the Ministry dated 19 July 1986, ACE agreed to evaluate the status of the plant and to prepare tender documents for contractors seeking to carry out the contract work to upgrade the plant. The contract provided that the Ministry was to pay ACE the amount of KWD 282,439 on a staged basis. The original contract period was 28 months.

266. ACE asserts that it carried out substantial extra design works under the contract because, as the project developed, it became clear that the Ministry wanted a new plant rather than an upgraded plant. ACE asserts that it was entitled to payment of an additional amount of KWD 195,000 for these extra design works. ACE first invoiced the Ministry for the extra works in May 1989. ACE asserts that while payment for the extra works was not specifically covered by the contract, the contract permitted the parties to agree to carry out further works. ACE appears to have invoiced the Ministry for the extra works according to a contractual formula for extra time incurred and materials consumed.

267. Although the Ministry disputed ACE's claim, ACE asserts that the Ministry was due to pay ACE the amount of KWD 195,000 for the extra works in August 1990. The payment was not made before Iraq's invasion and occupation of Kuwait. ACE alleges that the parties ultimately settled their differences under an Agreement of Conciliation and Amicable Settlement (the "Conciliation Agreement") dated 6 February 1995. Under the Conciliation Agreement, the Ministry agreed to pay ACE (and indeed subsequently paid ACE) the amount of KWD 29,700.

268. ACE alleges that the parties settled their dispute pursuant to the Conciliation Agreement for a number of reasons, including difficulties resulting from Iraq's invasion and occupation of Kuwait, particularly the loss of documents and the change in personnel at the Ministry, the fact that the Ministry's policy subsequent to the liberation was not to pay for work performed under variations to contracts, and the financial difficulties which Kuwait experienced post-liberation.

269. ACE seeks compensation in the amount of KWD 165,300 for the balance of unpaid invoices stated to be payable under the contract with the Ministry (KWD 195,000), less the amount which the Ministry paid ACE pursuant to the Conciliation Agreement (KWD 29,700).

(c) The Roads Project

270. Under ACE's contract with the Roads Corporation dated 27 January 1988, ACE agreed to design three feeder roads in Sudan. Additional contract work was implemented pursuant to an addendum dated 11 December 1988. The project was financed by the Kuwait Fund for Arab Economic Development (the "Fund"). Although the Fund financially supported the Roads Project, the Roads Corporation was contractually responsible to ACE for payment for ACE's work.

271. ACE received payments for work done in 1988. It asserts that payment of subsequent work which it invoiced in 1989 was delayed because the Fund temporarily suspended its financial support pending negotiations between the Fund and Sudan. However, ACE also asserts that the suspension was not subsequently lifted in any event due to Sudan's support for Iraq during Iraq's invasion and occupation of Kuwait. ACE asserts that as a result of

Iraq's invasion and occupation of Kuwait, the Fund ceased its activities in Sudan and ACE was unable to collect the unpaid monies.

272. ACE seeks compensation in the amount of KWD 36,000 for unpaid invoices for work carried out on the Roads Project in 1989.

2. Analysis and valuation

(a) The CCTV Project

273. Under its contract with the Ministry, ACE was entitled to be compensated by the Ministry for the amounts which it currently seeks before the Commission. It is unclear whether ACE invoiced the Ministry for either the employees' salaries or the tender evaluation costs. ACE provided a letter to the Ministry dated 4 September 1991 requesting payment of KWD 11,351 for tender evaluation reports. The amount was allegedly never paid. Because the majority of the documentation attached to the letter is in Arabic and has not been translated, the Panel was unable to conclude that the letter relates to the May 1990 work.

274. ACE provided substantial documentation in relation to the resumed CCTV Project in 1992, even though it makes no claim in relation to the resumed work. ACE also provided substantial documentation relating to the CCTV Project as a whole. However, none of the invoices or payment certificates provided indicate which employees were employed on Phase II Part A, what they were paid and what their tasks were intended to be.

275. Further, ACE failed to provide any evidence that Phase II Part A was about to commence in August 1990, such as evidence that it paid its employees for the costs which it claims, that a tender evaluation had taken place in May 1990, or that demand had been made of the Ministry for payment of the tender evaluation costs. In respect of the demand, the Panel has referred in paragraph 273, supra, to a letter dated 4 September 1991 to the Ministry which referred to payment for tender evaluation reports. However, the letter itself contains no detail linking the demand to ACE's work in May 1990 on Phase II Part A, and ACE did not provide a translation of the attachments.

276. In the absence of such evidence, the Panel finds that ACE failed to submit sufficient evidence to substantiate its claim and in particular to demonstrate that its loss was directly caused by Iraq's invasion and occupation of Kuwait.

277. The Panel recommends no compensation for the alleged employees' salaries and tender evaluation costs, as ACE did not provide sufficient evidence to support its claims for such alleged costs.

(b) The Ardiyah Project

278. The terms of the Conciliation Agreement are relevant to the Panel's consideration of ACE's claim. Article 2 provides that the Conciliation Agreement represents a "complete amicable settlement between the two parties for the dispute between them". Moreover, in consideration of the Ministry's payment of the sum of KWD 29,700, ACE agreed to waive "all past or present claims before any arbitration or judicial body and before the courts or any other body concerning the claims...".

279. The Panel finds that the terms of the Conciliation Agreement clearly demonstrate that ACE and the Ministry entered into a settlement agreement, which resolved a dispute that arose well before Iraq's invasion and occupation of Kuwait. The Panel further finds that ACE failed to demonstrate that its claimed losses were not covered by the terms of the Conciliation Agreement.

(c) The Roads Project

280. ACE provided a copy of part of its contract with the Roads Corporation but did not provide a full copy of the terms of payment. The Panel notes that there is no reference in the contract to the Fund being responsible for payment to ACE on behalf of the Roads Corporation, or any similar mechanism such as a guarantee. ACE provided no evidence establishing a direct payment demand against the Fund.

281. The documents provided by ACE indicate that the three invoices had been outstanding from dates in 1989 and that payment was required within 45 days of the date of the invoice. ACE provided no evidence to support its assertion that the failure of the Roads Corporation to pay the invoices was related to Iraq's invasion and occupation of Kuwait. Indeed, ACE claims that the initial reason for its inability to obtain payment was the Fund's interruption of funding pending negotiations with Sudan. The original cause of the non-payment of the 1989 invoices was due to negotiations between Kuwait and Sudan, not Iraq's invasion and occupation of Kuwait.

282. The failure of the Roads Corporation to pay the outstanding invoices was due to the interruption of the Fund's funding in 1989. The Panel finds that ACE did not demonstrate that its alleged losses were directly caused by Iraq's invasion and occupation of Kuwait.

3. Recommendation

283. The Panel recommends no compensation for contract losses.

B. Loss of tangible property

1. Facts and contentions

284. ACE seeks compensation in the amount of KWD 15,942 (USD 55,163) for loss of tangible property. The claim is for the alleged loss of furniture and office equipment from its Kuwait office.

285. ACE states that, on or about 4 August 1990, ACE's staff left the office and work sites. Most left the country. The items of tangible property were stolen or damaged some time after 4 August 1990, during Iraq's invasion and occupation of Kuwait. ACE states that it has not retrieved any of the property or its value. ACE seeks compensation for the net book value of its property as at 1 August 1990.

2. Analysis and valuation

286. ACE provided as evidence of its alleged losses a witness statement made by its executive secretary (the "witness statement"). The witness statement describes the general existence of the furniture and office equipment and states that ACE was the owner of the items. Attached are photographs which she took of the office and of the damaged furniture and office equipment during Iraq's occupation of Kuwait.

287. ACE also provided an audited balance sheet prepared after the liberation of Kuwait (it is dated 17 June 1992) reflecting the position as at 1 August 1990. The balance sheet includes an item for furniture and office equipment as part of ACE's fixed assets with a value of KWD 15,942. ACE also provided a detailed schedule of the value of the items of furniture and office equipment as at 31 December 1989. ACE states that this schedule formed the basis of the figures in the audited balance sheets. The schedule records each item of property, its purchase date, the original value, the cumulative depreciation value and the resulting book value.

288. ACE provided no documentary evidence apart from that described above that it owned the items. It was asked to provide documentary evidence in the article 34 notification. In its reply, ACE stated that no evidence of the ownership of the property was available as most records were destroyed during Iraq's invasion and occupation of Kuwait.

289. ACE's executive secretary explained in her witness statement that she discovered that the offices had been looted. The photographs taken by her confirm this. The Panel considers the witness statement and the photographs to be evidence of the fact of loss and the cause thereof.

290. The Panel normally requires a claimant to supply clear documentary evidence of title to or right to use tangible property, such as invoices and customs declarations. ACE states that it is unable to provide such evidence because its offices were looted. The Panel considers that there

is sufficient evidence to establish that the majority of ACE's records relating to its purchases and maintenance of the tangible property were kept in its Kuwait office and were not duplicated in ACE's offices in other countries. Nor could ACE have been expected to duplicate such records in other countries, because ACE's Kuwait office, although receiving support and direction from offices in other countries, essentially operated independently. Taking into account the clear evidence of looting, and on the basis that there is some documentary evidence of title, presence in Kuwait and value in the form of the audited balance sheet and the schedule, the Panel finds that ACE provided sufficient evidence of ACE's title to or right to use, and the presence in Kuwait of, the tangible property.

291. The Panel requested its expert consultants to perform a valuation of the losses. The Panel's expert consultants concluded that there is sufficient evidence of some value for the lost furniture and office equipment based on the audited balance sheet, but that the value is less than that attributed to this loss element by ACE because of the limited information available. The experts consider that there is sufficient evidence for a valuation of the tangible property in the amount of KWD 8,846. The Panel accepts the expert consultants' valuation and recommends compensation in the amount of KWD 8,846 (USD 30,698).

3. Recommendation

292. The Panel recommends compensation in the amount of USD 30,698 for loss of tangible property.

C. Loss of intangible property

1. Facts and contentions

293. ACE seeks compensation in the amount of KWD 25,000 (USD 86,505) for the replacement cost of computer software and drawings alleged to have been destroyed or damaged during Iraq's invasion and occupation of Kuwait. ACE alleges that the replacement cost of the software is KWD 10,000 and of the drawings is KWD 15,000. These items were stated to have been in ACE's Kuwait office at the time of Iraq's invasion and occupation of Kuwait.

294. ACE describes the circumstances of the loss in the same terms as its loss of tangible property. However, the Panel is satisfied that ACE seeks compensation for the economic value of the information contained in the software and drawings, not of the physical materials themselves.

295. ACE originally classified the claim for the loss or destruction of the software and drawings as "loss of tangible property", but the losses are more appropriately classified as intangible property losses.

296. ACE provided no information as to the reason for the selection of the replacement cost valuation methodology for these items.

2. Analysis and valuation

297. ACE provided as evidence of its alleged losses the witness statement of the executive secretary referred to in paragraph 286, supra. As with its claim for loss of tangible property, ACE states that it was unable to provide any documentary evidence relating to its claim for loss of intangible property.

298. In order to establish a claim for loss of intangible property, a claimant must provide evidence of a similar nature as is required to substantiate a claim for loss of tangible property. A claimant must therefore provide sufficient evidence of its title to or right to use, and the value and presence in Kuwait of, the intangible property. There will sometimes be differences in the nature of information and evidence needed to substantiate claims for loss of intangible property as opposed to claims for tangible property, particularly in relation to valuation.

299. Taking into account the executive secretary's account of the looting of the intangible property, and the unavoidable difficulties experienced by ACE in providing documentary evidence of its alleged losses, the Panel finds that ACE provided sufficient evidence of its title to or right to use, and the presence in Kuwait of, the computer software and drawings.

300. The Panel finds, however, that there is insufficient information about, or evidence of the value of, the software or the drawings, to attempt a valuation of these items. ACE failed to provide information or evidence about such matters as the date of purchase of the software; the use to which the software and drawings were put; whether it is possible to recreate the lost information from memory; and the time necessary to create or recreate the information.

3. Recommendation

301. The Panel recommends no compensation for loss of intangible property.

D. Payment or relief to others

1. Facts and contentions

302. ACE seeks compensation in the amount of KWD 7,000 (USD 24,221) for payment or relief to others. The claim is for travel expense advances paid in cash to four directors in order to allow them to leave Kuwait on or around 4 August 1990, for Lebanon, Greece and Jordan, respectively. Three of the directors were visiting Kuwait at the time of Iraq's invasion and occupation of Kuwait. The fourth director was the branch office manager who lived in Kuwait.

303. ACE provided no details of the actual travel routes taken by, or of the actual destinations of, each of the four directors.

2. Analysis and valuation

304. ACE provided as evidence of its alleged losses the witness statement of the executive secretary referred to in paragraph 286, supra, and an undated document which records the amounts paid to the four directors with their signatures acknowledging the payments. In its reply to the article 34 notification, ACE stated that the directors did not retain any receipts or other evidence of their costs.

305. The Panel finds that as the three non-resident directors were visiting the Kuwait branch office, ACE would ordinarily be expected to have paid for their travel costs from Kuwait to their home countries at some point in any event. ACE provided no evidence either of the purchase of tickets prior to 2 August 1990 which the directors were consequently unable to use after that date, or of the fact that all or part of their actual travel costs were higher than normal. ACE failed to submit any evidence that the advances were in excess of the ordinary travel expenses of the directors.

306. The fourth director, who was Lebanese, lived in Kuwait. Therefore, it could not ordinarily be expected that he would have had to leave Kuwait at any stage. However, ACE provided no information or evidence as to the mode of transport, his actual route or final destination. In the absence of such information and evidence, the Panel is unable to assess whether the costs claimed were temporary and extraordinary in nature.

307. The Panel considers that ACE failed to provide sufficient information concerning, and evidence of, the alleged costs to support its claim for payment or relief to others.

3. Recommendation

308. The Panel recommends no compensation for payment or relief to others.

E. Other losses

1. Facts and contentions

309. ACE seeks compensation in the amount of KWD 230,499 (USD 797,574) for the costs of resuming its activities in Kuwait after the liberation of Kuwait (the "restart costs") and salaries paid to six directors (the "directors' costs").

(a) Restart costs

310. ACE seeks compensation in the amount of KWD 85,422 for the costs of resuming its activities in Kuwait between 1 May 1991 and 30 June 1992. ACE seeks compensation for, inter alia, cleaning the office and re-employing staff.

(b) Directors' costs

311. ACE seeks compensation in the amount of KWD 145,077 for the costs which it alleges it paid six directors between 1 August 1990 and 30 June 1992. ACE asserts that a certain percentage of these costs were normally payable by ACE's Kuwait branch, but because the branch was not in operation due to Iraq's invasion and occupation of Kuwait, ACE was unable to allocate the directors' costs to its Kuwait branch during this period.

312. In effect, the amounts claimed represent part of ACE's Kuwait branch overheads. The Panel has therefore treated the claim as being analogous to a claim for loss of profits.

2. Analysis and valuation

(a) Restart costs

313. A claimant seeking compensation for restart costs must provide proof of payment for the items claimed. It must further demonstrate that it incurred costs in excess of costs normally incurred by the claimant for this type of expense.

314. As evidence of its claim for restart costs, ACE provided the witness statement, a detailed list of expenses related to the restart costs between 1 May 1991 and 30 June 1992, and the supporting computer generated ledger books from 1991 and 1992.

315. In the article 34 notification, ACE was asked to provide invoices and proof of payment for the services listed. It failed to provide such evidence. ACE provided bank statements for 1991, but these have insufficient detail to match with the alleged disposition of funds for the items comprising the restart costs. ACE therefore failed to establish proof of payment of any of the costs claimed.

(b) Directors' costs

316. The Panel has stated in paragraph 312, supra, that this claim is analogous to a claim for loss of profits. The nature of ACE's assertions indicates that the directors' costs form part of ACE's Kuwait branch's overheads and would normally have been paid out of the branch's earnings.

317. The requirements to substantiate a loss of profits claim have been stated by the Panel in paragraphs 16 and 17, supra.

318. As evidence of its claim for directors' costs, ACE provided audited financial statements prepared on behalf of ACE for the years 1987, 1988 and 1989. It also provided consolidated group accounts for the Associated Consulting Engineers Group for the years 1989-1990. The ledger books referred to in paragraph 314, supra, contain some references to payments to directors. However, ACE did not provide audited financial statements for

its Kuwait branch or for the consolidated group after 1990. Nor did it provide budgets, management accounts, or evidence of expected turnover.

319. Further, ACE failed to provide copies of the contracts with the directors giving rise to their alleged entitlement to the payments made by ACE, evidence that these costs were historically allocated to the Kuwait branch or evidence of payment of these costs.

320. The Panel finds that ACE failed to provide sufficient explanations and evidence to substantiate its claims for the restart costs and the directors' costs.

3. Recommendation

321. The Panel recommends no compensation for other losses.

F. Interest

322. With reference to the issue of interest, the Panel refers to paragraphs 19 and 20, supra, of this report.

G. Claim preparation costs

323. ACE seeks compensation in the amount of KWD 1,500 (USD 5,190) for asserted claim preparation costs. In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs at a future date. Accordingly, the Panel takes no action with respect to the claim by ACE for such costs.

H. Recommendation for ACE

Table 18. Recommended compensation for ACE

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	752,509	nil
Loss of tangible property	55,163	30,608
Loss of intangible property	86,505	nil
Payment or relief to others	24,221	nil
Other losses	797,574	nil
Interest (no amount specified)	(--)	(--)
Claim preparation costs	5,190	(--)
Total	1,721,162	30,608

324. Based on its findings regarding ACE's claim, the Panel recommends compensation in the amount of USD 30,608. The Panel finds the date of loss to be 4 August 1990.

XII. MOUCHEL CONSULTING LIMITED

325. Mouchel Consulting Limited ("Mouchel") is a corporation organised according to the laws of the United Kingdom operating in the fields of road design and the supervision of roading projects. A number of Mouchel's claims arise out of losses allegedly suffered by Mouchel Middle East Limited, a 'related' company. This fact has been noted in the report where applicable.

326. In the "E" claim form, Mouchel sought compensation in the amount of KWD 653,246 (USD 2,260,367) for contract losses, payment or relief to others, financial losses and other losses. In its reply to the article 34 notification and to a request for further information, Mouchel increased the total amount claimed for the existing loss elements and introduced new loss elements. It also advised that it was no longer seeking compensation for certain contingent claims which formed part of its original claim, because the events which would have triggered the contingent claims had not occurred. The Panel has only considered those losses contained in the original claim except where such losses have been withdrawn or reduced by Mouchel. Where Mouchel reduced the amount of losses in its reply to the article 34 notification and to the request for further information, the Panel has considered the reduced amount.

327. The Panel has reclassified elements of Mouchel's claim for the purposes of this report. The Panel therefore considered the amount of KWD 337,355 (USD 1,167,318) for loss of profits, loss of tangible property, payment or relief to others, financial losses and other losses, as follows.

Table 19. Mouchel's claim

Claim element	Claim amount (USD)
Loss of profits	232,611
Loss of tangible property	76,699
Payment or relief to others	559,168
Financial losses	3,497
Other losses	295,343
Total	1,167,318

A. Loss of profits

1. Facts and contentions

328. Mouchel seeks compensation in the amount of KWD 67,225 (USD 232,611) for loss of profits which it expected to receive in relation to a roading project in Kuwait City (the "Roads Project"). The Roads Project involved

the construction of 11 kilometres of major urban motorways within the boundaries of Kuwait City. The Ministry of Public Works, Kuwait, was the employer (the "Ministry").

329. On 27 February 1982, Mouchel entered into contract EF/R/29 with the Ministry. Under this contract (the "Contract"), Mouchel agreed to provide design and supervision services for the Roads Project until 1987. Because the Ministry requested an expansion of the Project works (see paragraph 330, infra) with a consequent extension of time, Mouchel was still carrying out works under the Contract at the time of Iraq's invasion and occupation of Kuwait.

330. The value of the design services under the Contract was KWD 1,654,930. The value of the supervision services was KWD 6,799,165. Therefore the total value of the Contract at the date of its signature was KWD 8,454,095. The Ministry subsequently requested amendments to the scope of Mouchel's services under the Contract. Due to these contractual amendments, the value of the design services increased to KWD 4,409,899, with a consequential increase in the total contract value to KWD 11,209,064. There was no change to the value of the supervision services.

331. Mouchel stated that it had completed all design services and substantial components of the supervision services prior to 2 August 1990. The works requiring completion were parts of the supervision services of three contracts between the Ministry and local contractors which were executing the works.

332. Mouchel asserted that the actual framework for the provision of services and payment for those services did not reflect the total contract value stated in paragraph 330, supra. The Ministry authorised tranches of the total contract value. Mouchel would then carry out that work and only be paid the maximum value of the amount authorised. As at 2 August 1990, the Ministry had only authorised expenditure of KWD 7,713,819 since the date of the signing of the Contract. The figure of KWD 7,713,819 is the authorised contract value.

333. In its original claim submission, Mouchel calculated its alleged loss of profit as follows. As at 1 August 1990, the authorised contract value was KWD 7,713,819. The Ministry paid Mouchel the amount of KWD 6,983,117 for services performed until the same date. Therefore, the asserted unexecuted authorised value of the Contract was KWD 730,702 (authorised contract value less payments received).

334. Mouchel then applied a multiplier of 9.2 per cent for profits to give a figure for loss of profits in the amount of KWD 67,225 (730,702 multiplied by 9.2 per cent equals 67,225). Mouchel asserted that the figure of 9.2 per cent was "based on the overall rate applicable to supervision projects". The 'profit' level for work already performed was

"approved profit". That is to say, the Ministry had approved the 'profit' level.

335. This is consistent with the terms of the Contract, which provide not only the formula for the basis of the 'profit' under the Contract, but also the actual amount of the 'profit'. The approval process is also reflected in correspondence with the Ministry which Mouchel provided.

336. Mouchel resumed work under the Contract in 1992. However, it stated that the works which it carried out were not the same works which it had contracted to perform under the Contract. The post-liberation work constituted damage assessment of a number of the Roads Project components. Mouchel had had no prior involvement with some of these components before 2 August 1990. Further, it obtained some of the work following competition with another party and carried out other works in joint venture with other consultants.

2. Analysis and valuation

337. The requirements to substantiate a loss of profits claim have been stated by the Panel in paragraphs 14 and 17, supra.

338. In support of its claim, Mouchel provided copies of the following documents: the Contract (the Contract contains the budgets and tender sum analyses); a document entitled 'Analysis of approved budget ceiling' which was stated to have been attached to one of the last invoices sent to the Ministry prior to the invasion; correspondence of various dates from the Ministry prior to 2 August 1990 authorizing amendments to the Contract and defining the effect on Mouchel's entitlements; Mouchel's invoices attached to the correspondence detailing the reasons for the amendments; correspondence with the Ministry after the liberation of Kuwait regarding payment of outstanding amounts including detailed invoices; the final payment certificate No. 166 for the Roads Project dated 7 February 1993 (reflecting the position both before and after 1 August 1990); audited financial statements for Mouchel Middle East Limited for the years 1987-1993; and certified tax submissions for Mouchel Middle East Limited for the same period.

339. Although Mouchel provided satisfactory evidence of some level of gross profit between 1988 and 1990, and of net profit in 1989 and 1990, Mouchel must establish that its claim meets the requirements of decision 9 (see paragraph 14, supra). Mouchel must prove that the continuation of the Contract was rendered impossible by Iraq's invasion and occupation of Kuwait. Further, decision 9 indicates a requirement that profits should be measured over the life of the Contract. Mouchel must demonstrate that the Contract would have been profitable as a whole. It is not sufficient to prove a profit at any stage before the completion of the Roads Project. In other words, and consistent with the position the F3 Panel has adopted in its previous reports, claimants must provide evidence that establishes with

reasonable certainty ongoing and expected profitability to support a claim for loss of profits. In the absence of such evidence, the Panel will not recommend compensation for loss of profits.

340. There are two issues which arise in the context of the Panel's consideration of whether the claimed losses are direct. The issues are the effect of the resumption of the Contract in 1992 and whether Mouchel demonstrated that Iraq's invasion and occupation of Kuwait caused Mouchel to terminate its supervision work under the Contract on 2 August 1990.

341. In relation to the issue of the effect of the resumption of the Contract, Mouchel asserted that, had Iraq's invasion and occupation of Kuwait not occurred, it would have completed the supervision works under the Contract. Due to this event, it was unable to complete its work until 1993. However, the work in 1992 and 1993, while still carried out and invoiced under the Contract, was of a different nature to that originally agreed to. It was in the nature of new or reconstruction work rather than supervision. In other words, Mouchel stated that there was no overlap between the work it carried out prior to Iraq's invasion and occupation of Kuwait and the work it carried out post-liberation. Mouchel stated that this is established by the fact that it had to compete with other consultants or enter into joint ventures with them, in order to secure the work. Mouchel recognised that any overlap represents work for which Mouchel suffered no loss except for the interest on that amount between 2 August 1990 and the date of payment.

342. Mouchel provided evidence regarding the anticipated scope of the services which it stated it actually provided to the Ministry under the Contract in 1992 and 1993. This was a document from Mouchel Middle East Limited to the Ministry in November 1991 called a "Technical and Financial Proposal". This document indicates that the post-liberation works were to be remedial works. The Panel considers that notwithstanding the absence of documentary evidence concerning the actual scope of the post-liberation works, the "Technical and Financial Proposal" is sufficient evidence verifying Mouchel's claim.

343. In relation to the issue of whether Iraq's invasion and occupation of Kuwait caused Mouchel to terminate the Project works on 2 August 1990, Mouchel provided sufficient evidence to establish that its performance under the Contract stopped on 2 August 1990 as a result of Iraq's invasion and occupation of Kuwait and did not resume until 1992. Its employees stopped working. Some were able to leave, while others were detained for a considerable period. The Panel also notes that the evidence which Mouchel provided establishes that it was the Ministry which was responsible for the extension to the Contract. The Panel is satisfied that Mouchel demonstrated that the claimed loss of profits under the Contract is a direct result of Iraq's invasion and occupation of Kuwait.

344. The final issue is the validity of Mouchel's valuation of its claim

for loss of profits. The terms of the Contract establish what the Ministry would pay Mouchel for 'profit' under the Contract. However, the Panel's expert consultants have analysed Mouchel's claim and consider that the claimed 'profit' is a notional figure, not an actual figure. Based on Mouchel Middle East Limited's audited financial statements and tax submissions, Mouchel's asserted level of profit of 9.2 per cent is too high. Mouchel Middle East Limited had other direct costs for its operations, such as local office administration expenses. The earnings from the Contract contributed towards these costs. Mouchel did not take these additional costs into account in formulating its claim for loss of profits.

345. Mouchel's assertion that it was deriving net profit from the Contract is substantiated by Mouchel Middle East Limited's audited financial statements and tax submissions for the period 1988-1990. Mouchel achieved a gross profit from its operations in Kuwait in the years 1988, 1989 and 1990, and a net profit in 1989 and 1990 (KWD 20,160 and KWD 111,498 respectively). Further, the financial statements demonstrate that the Contract contributed significantly to Mouchel's profitability during this period.

346. The Panel requested its expert consultants to perform a valuation of the loss. The Panel's expert consultants calculated that after consideration of the other direct costs referred to in paragraph 344, *supra*, the Contract contributed an average of 6.86 per cent of Mouchel's few income between 1988 and 1990. The expert consultants applied this percentage to the authorised contract value of KWD 730,702 and concluded that Mouchel had established a loss of profits in the amount of KWD 50,126 as at 2 August 1990 (730,702 multiplied by 6.86 per cent).

347. The Panel finds that Mouchel provided sufficient evidence to substantiate its loss of profits claim. The Panel considers that the methodology utilised by its expert consultants provides an appropriate methodology to assess Mouchel's loss of profits. The Panel accepts the valuation of its expert consultants. The Panel recommends compensation in the amount of KWD 50,126 (USD 173,446).

3. Recommendation

348. The Panel recommends compensation in the amount of USD 173,446 for loss of profits.

B. Loss of tangible property

1. Facts and contentions

349. Mouchel seeks compensation in the amount of KWD 22,166 (USD 76,699) for loss of tangible property. The claim is for vehicles, domestic and office furniture and equipment in Kuwait at the time of Iraq's invasion and

occupation of Kuwait.

350. Mouchel stated that during Iraq's invasion and occupation of Kuwait, its properties were looted and soiled, and the items damaged or taken. One of Mouchel's employees inspected the properties on and after 15 March 1991, taking photographs of the damage. Apart from some personal effects of Mouchel's employees, "there was nil effective recovery". When the Contract resumed in 1992, all office equipment allegedly had to be replaced. The computers were damaged beyond repair.

351. The amount claimed represents the net book value of these items as at 31 July 1990. Mouchel did not individually summarise the items.

2. Analysis and valuation

352. In support of its claim for loss of tangible property, Mouchel provided photographs of items of tangible property. Although the photographs of the items of domestic property do depict damage, Mouchel made no attempt to identify which items depicted in the photographs belonged to it and which belonged to its employees. The photographs of alleged damage to the office properties depicted some disorder but no damage. The Panel therefore finds that the photographic evidence is inconclusive.

353. The only evidence provided by Mouchel apart from the photographs are audited financial statements for the years 1987-1993 and tax submissions for the same period. The statements assign value to global descriptions of tangible property. Mouchel stated in its reply to the article 34 notification that the audited figures should be accepted as evidence of the presence and (conservative) value of the goods in Kuwait.

354. Mouchel provided no other evidence that it owned the items or indeed of the existence of individual items in Kuwait. It was requested to provide documentary evidence in the article 34 notification, such as purchase invoices and customs records. Mouchel replied that its Kuwait branch was "largely autonomous". It further stated that:

> "documentation existed only in Kuwait. The files regarding property and inventories contained receipts signed by staff. These files as well as all personnel files which might contain addresses, leases etc were it appeared destroyed by our own staff in hiding in Kuwait. They wanted there to be no clue as to their whereabouts in hiding".

355. The Panel finds that Mouchel failed to provide sufficient evidence to support its claim. Further, the Panel finds that the circumstances alleged by Mouchel to justify the lack of evidence do not adequately recognise the fact that although the branch was stated to be "largely autonomous", the entity holding the contracts, Mouchel, was at that time a United Kingdom

paying them two months' salary in lieu of the contractual notice period.

363. Mouchel asserted that although it would normally have had to make salary payments to its expatriate employees representing two months' notice, and the Ministry would have reimbursed Mouchel, Mouchel would normally have given these employees two months' notice and asked them to work out their notice period. The conclusion of the notice period would have coincided with the conclusion of the particular project. Mouchel stated that it was not possible to make such arrangements in the present case because of Iraq's invasion and occupation of Kuwait, causing Mouchel to have to pay its employees for a period when they carried out no work.

(b) Salary payments to detained employees

364. Mouchel seeks compensation in the amount of KWD 61,872 for salary payments to detained employees and to one local employee.

365. Following Iraq's invasion and occupation of Kuwait, 17 of Mouchel's expatriate employees were either moved to Iraq and deployed by the Iraqi forces as 'human shields' or were in hiding in Kuwait. Some of the families of these employees were also detained. The employees were released in December 1990.

366. Mouchel asserted that it was unable to give the detained or hidden employees notice of termination of their contracts. Mouchel provided "interim relief" to the detained employees through payment of 50 per cent of each employee's salary for the five month period in Pounds sterling (GBP).

367. In August 1991, the Ministry paid Mouchel for work done on the various projects until 2 August 1990. At this time, Mouchel paid the remaining 50 per cent of the salaries to the 17 employees, representing the remaining 50 per cent of their salaries for the period of their detention.

368. Mouchel also made a payment to a local employee who assisted the detained expatriate employees.

369. The Panel notes that the Commission has previously awarded compensation in category "C" to seven of the detained employees for lost salary payments during their period of detention (the "lost income awards"). The lost income awards include compensation for the payments which Mouchel made in August 1991.

(c) Termination payments

370. Mouchel seeks compensation in the amount of KWD 64,324 for payments allegedly made to some of its expatriate and local employees as benefits receivable upon the termination of their employment. The payments were allegedly made because Iraq's invasion and occupation of Kuwait interrupted Mouchel's projects in Kuwait to such an extent that it could no longer

employ the employees.

471. Mouchel asserted that it paid some of its expatriate employees termination payments, the amounts being determined in accordance with length of service.

472. Mouchel also made termination payments to its local employees and they received no contractual notice payments or any other payments. The payments to the local employees appear to have been made in accordance with Mouchel's "terminal indemnity policy".

(b) Airfares

473. Mouchel seeks compensation in the amount of £[ ] in the context of airfares repatriating the detained employees. The difference in the claimed £[amount] paid for this flight is between that and a standard [amount] reimbursement from Mouchel to the Kuwaiti [illegible] for airfares.

474. Mouchel asserted that had its personnel [illegible] returned by chartered, the Ministry would have reimbursed Mouchel for [illegible] airfares to the United Kingdom.

(c) Miscellaneous expenses claims

475. Mouchel seeks compensation in the amount of £[ ] for [illegible] claimed expenses consist of miscellaneous [illegible] Mouchel reimbursed these employees. These claims relate to [illegible] and travel costs (including accommodation) [illegible] employees when they were released. [illegible] claims [illegible] claims do not overlap with the claims for airfares.

476. Mouchel also seeks compensation for costs incurred by the director of Mouchel responsible for the welfare of the detained employees, such as petrol costs.

2. Analysis and valuation

(a) Salary payments - payment of contractual notice to expatriate employees

477. Mouchel provided as evidence of its alleged losses copies of the following documents: bank statements; matching cheques; transfer payment authorizations; correspondence with some expatriate employees; payroll summaries; some miscellaneous vouchers; a sample copy of an employment providing for a two month notice period; and an affidavit from a director of Mouchel verifying that the contract provided applied to all expatriate employees.

478. The Panel finds that the alleged loss is a direct loss in principle. A company in Mouchel's position would ordinarily ensure that it gave its employees sufficient notice so as to only pay them to provide productive

work.

379. The Panel finds that Mouchel provided sufficient evidence of the alleged obligation to give two months' notice to all 17 employees. However, the evidence provided by Mouchel in relation to payments to three of the 17 employees was insufficient to demonstrate that the payments were in fact made in accordance with this obligation. The Panel accordingly finds that Mouchel demonstrated that the salary payments to the other 14 expatriate employees were incurred as a direct result of Iraq's invasion and occupation of Kuwait.

380. The Panel recommends compensation for the salary payments (contractual notice) in the amount of KWD 18,326 (USD 63,412).

(b) Salary payments to detained employees

381. Mouchel provided as evidence of its alleged losses copies of the following documents: bank statements; matching cheques; internal payment authorisations; correspondence with some of the detained employees; payroll summaries; a sample contract of employment; and some miscellaneous invoices. The evidence submitted establishes that Mouchel made salary payments in 1990 and 1992 in the amount of KWD 61,872.

382. The Panel finds that the alleged loss is a direct loss. It was reasonable for Mouchel to continue to pay the detained employees' salaries between August and December 1990 and the salary of the local employee who assisted the detained employees.

383. Upon reviewing the evidence, the Panel made a reduction for certain inconsistencies in the evidence which Mouchel provided.

384. In addition, the Panel refers to paragraph 369 above and notes that a reduction must be made for the previous lost income awards to the seven detained employees. The Panel finds that the component of their lost income awards relating to compensation for the payments representing the remaining 50 per cent of their salaries for the period of their detention equals, and therefore extinguishes, Mouchel's claim for compensation for salary payments to the seven employees for the payments which Mouchel made in August 1991.

385. The Panel recommends compensation for salary payments to detained employees in the amount of KWD 47,934 (USD 165,861).

(c) Termination payments

386. Mouchel provided as evidence of its alleged losses copies of the following documents: correspondence with the local employees which referred to a "Terminal Indemnity policy" under which the local employees were to receive payment according to their length of service; a sample contract of employment for expatriate employees; and audited financial statements.

(i) Local employees

187. The Panel notes that, in Mouchel's reply to the article 34 notification, it stated that the payments to both the expatriate employees and the local employees for which Mouchel seeks compensation were made 'ex gratia'.

188. The Panel nevertheless considers that Mouchel provided sufficient evidence to establish an obligation on the part of Mouchel to make the payments to the local employees and that the obligation was triggered by Iraq's invasion and occupation of Kuwait. Mouchel's financial statements prepared in the years prior to Iraq's invasion and occupation of Kuwait demonstrate that Mouchel made provision for these payments on the basis that it was subject to a legal obligation to its local employees. Mouchel advised the Panel that its auditors made this provision because it was prudent to do so.

189. However, because Mouchel made provision for these payments in its accounts, the Panel finds that Mouchel would have made these payments regardless of the reason for termination of the employment relationship. This is confirmed by Mouchel's statement in reply to the article 34 notification that 'in respect of termination costs it is clear that all reasonable costs in connection with demobilization would have been payable. However these cost would have been demonstrated in terms of other components in this claim.' Mouchel therefore failed to demonstrate that the cost of the termination payments to the local employees was suffered as a direct result of Iraq's invasion and occupation of Kuwait.

(ii) Expatriate employees

190. Although Mouchel provided a sample contract of employment, it failed to provide evidence of its asserted legal obligation to make termination payments to expatriate employees, such as extracts from applicable laws which actually established the obligation to make such payments. Moreover, while the financial statements refer to Kuwaiti labour laws, Mouchel stated that the application of these laws to the expatriate employees was unclear and that it never acknowledged their application to expatriate employees. Finally, Mouchel stated that the payments were in fact made to relieve particular hardship. This indicates that the payments were truly ex gratia. The Panel accordingly finds that Mouchel failed to demonstrate that the cost of the termination payments to the expatriate employees was suffered as a direct result of Iraq's invasion and occupation of Kuwait.

(d) Airfares

191. Mouchel provided no evidence of payment of the airfares or of Mouchel's payment of the bill which it allegedly received from the Government of the United Kingdom. The Panel finds that Mouchel provided insufficient evidence to substantiate its alleged loss.

(e) Miscellaneous evacuation costs

392. Mouchel provided as evidence of its alleged losses copies of the following documents: bank statements; matching cheques; internal payment authorisations; correspondence with employees and their dependants; invoices; and receipts. These documents indicate that the travel costs were incurred in the course of repatriation of expatriate employees from Kuwait and Saudi Arabia once they were released from detention, to their homes in the United Kingdom. The evidence provided indicates that associated hotel costs were incurred en route.

393. Mouchel normally paid for its employees' travel costs, and was then reimbursed by the Ministry. This practice was brought to an end by Iraq's invasion and occupation of Kuwait. The Panel therefore finds that all of the travel costs incurred by the detained employees and reimbursed by Mouchel were suffered as a direct result of Iraq's invasion and occupation of Kuwait.

394. The Panel recommends compensation for miscellaneous evacuation costs in the amount of KWD 795 (USD 2,751).

395. The remainder of the costs were incurred by the Mouchel director. Mouchel provided insufficient evidence of why the costs were incurred. The Panel finds that Mouchel failed to submit sufficient evidence to demonstrate that the alleged costs were incurred as a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

396. The Panel recommends compensation in the amount of USD 232,024 for payment or relief to others.

D. Financial losses

1. Facts and contentions

397. Mouchel seeks compensation in the amount of KWD 1,011 (USD 3,497) for "bond costs". Mouchel provided no explanation of the claim. It appears from the evidence provided that Mouchel gave a bond or guarantee to Gulf Bank of Kuwait in the amount of KWD 145,000, and that the amount sought represents charges for "the period to 24 July 1991" in respect of the bond or guarantee.

2. Analysis and valuation

398. Mouchel provided as evidence of its alleged losses copies of an internal payment authorisation, and a bank statement and debit advice from a United Kingdom bank. The evidence establishes Mouchel's payment of the amount sought. However, Mouchel provided no evidence of the circumstances resulting in its entry into the bond or guarantee or the reason for payment

of the amount paid. The Panel finds that Mouchel failed to demonstrate that the alleged loss was suffered as a direct result of Iraq's invasion and occupation of Kuwait.

i) Recommendation

399. The Panel recommends no compensation for financial losses.

g) Other losses

i) Facts and contentions

400. Mouchel seeks compensation in the amount of KWD 85,314 (US$ 295,343) for other losses. The claim is for the amount allegedly paid by Mouchel to settle a rental judgment and associated costs (the "rental judgment"), and reclaim costs associated with restarting its activities in Kuwait after the liberation of Kuwait (the "restart costs").

(a) Rental judgment

401. Mouchel stated that at the time of Iraq's invasion and occupation of Kuwait, it leased many Kuwaiti properties for the use of its employees. The Ministry was responsible for reimbursing Mouchel for these rental costs.

402. Mouchel asserted that one lessor succeeded in obtaining a judgment from a Kuwaiti court for unpaid rent which accrued during Iraq's occupation of Kuwait and until 1 June 1991, in the amount of KWD 18,191. According to Mouchel, the Kuwaiti courts did not consider Iraq's invasion and occupation of Kuwait as a valid legal reason for relieving lessees of their liability. The Ministry refused to pay the rent. Mouchel alleged that it settled this dispute by the payment of KWD 9,250 to the lessor on 25 April 1994. Mouchel also seeks compensation in the amount of KWD 300 for legal fees which it paid to its lawyers in Kuwait to advise on the claim.

(b) Restart costs

403. Mouchel stated that in 1991 and 1992, it incurred substantial costs to re-establish its pre-invasion position in Kuwait. Some costs were associated with attending to the potential recovery of assets, and can be seen as attempts to mitigate loss. Some costs were associated with attempts to regain involvement in the contracts forming the Roads Project. The remainder of the costs represent losses for 1991 and 1992 for which Mouchel did not receive any subsequent credit.

404. Mouchel seeks compensation in the amount of KWD 79,804. This figure represents the amount of Mouchel's losses between August 1990 and July 1992 as shown in the profit and loss statements which Mouchel originally provided. The Panel notes that in its reply to the article 34 notification, Mouchel provided amended financial statements containing a

higher figure of KWD 86,443. As is stated in paragraph 326, supra, the Panel has based its review on the original (lower) figure.

2. Analysis and valuation

(a) Rental judgment

405. Mouchel provided as evidence of the settlement and legal fees, copies of the following documents: a letter from Mouchel to the lessor dated 10 June 1991; an untranslated copy of the judgment; and the settlement agreement with the lessor signed on 25 April 1994.

406. Mouchel was requested in the article 34 notification to provide the lease agreement and a translated copy of the judgment. Mouchel failed to provide a translated copy of the judgment. Mouchel stated that it had provided a copy of the lease. It supplied several documents in Arabic, which have not been translated.

407. The letter and settlement agreement constitute evidence demonstrating that there was a dispute between Mouchel and a lessor regarding the payment of rental for at least one property during the period of Iraq's invasion and occupation of Kuwait and afterwards, that the lessor succeeded in obtaining judgment for the rental, that the dispute was settled for a smaller amount (KWD 5,250) and that Mouchel paid this smaller amount.

408. However, because Mouchel failed to provide translated copies of the judgment or the lease, it is impossible to assess whether the loss claimed is direct. Mouchel provided no information as to the basis of the judgment. Further, without a translated copy of the lease, it is not possible to determine whether the alleged amount of the judgment was correct or that the settlement with the lessor was reasonable. In addition, Mouchel supplied no proof of payment of the legal fees.

409. In relation to the claim for the amount paid to the lessor in settlement of the rental judgment and the consequential legal fees, the Panel finds that Mouchel failed to establish that the losses were suffered as a direct result of Iraq's invasion and occupation of Kuwait.

(b) Restart costs

410. Mouchel provided as evidence of the restart costs audited financial statements and tax submissions to the Kuwaiti authorities for 1991 and 1992.

411. Mouchel was requested in the article 34 notification to provide bank statements and evidence of its alleged expenses and costs, such as invoices or receipts. In its reply, Mouchel stated that where the alleged losses related to transactions in Kuwait post-liberation, it was not always possible to obtain receipts and many transactions were cash transactions. It also stated that where invoices exist, they had been archived and could

not be retrieved at short notice. Mouchel stated that the Panel should accept the audited figures, which are based on the individual documents.

412. The Panel finds that Mouchel could have and should have submitted documentary evidence of its post-liberation expenses in its original claim submission in the form of bank statements and invoices where available. The office of Mouchel Middle East Limited was re-established in Kuwait post-liberation and some records were obviously kept.

413. In relation to the claim for restart costs, the Panel finds that Mouchel failed to establish that it incurred such costs and losses, and that such costs and losses were incurred or suffered as a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommendation

414. The Panel recommends no compensation for other losses.

F. Recommendation for Mouchel

Table 28. Recommended compensation for Mouchel

Claim element	Claim amount (USD)	Recommended compensation (USD)
Loss of profits	232,611	173,446
Loss of tangible property	76,699	nil
Payment or relief to others	559,168	232,024
Financial losses	3,497	nil
Other losses	295,343	nil
Total	1,167,318	405,470

415. Based on its findings regarding the Mouchel's claim, the Panel recommends compensation in the amount of USD 405,470. In relation to Mouchel's claim for loss of profits, the Panel finds the date of loss to be 2 August 1990. In relation to Mouchel's claim for payment or relief to others, the Panel finds the date of loss to be 2 November 1990.

XIII. INTERGRAPH CORPORATION

416. Intergraph Corporation ("Intergraph") is a corporation organised according to the laws of the United States of America and the parent company of Intergraph Middle East Limited ("IME"), a corporation organise according to the laws of Cyprus. IME allegedly sustained losses arising out of contracts to provide information systems in Kuwait. Intergraph states that IME's losses were assigned to Intergraph and that Intergraph credited IME for the losses incurred in Kuwait. Intergraph states that i is therefore the proper claimant to file a claim with the Commission.

417. In the "E" claim form, Intergraph sought compensation in the amount USD 2,247,775 for contract losses, loss of tangible property, loss of income producing property, payment or relief to others and other losses (loss of petty cash and deposits).

418. The Panel has reclassified elements of Intergraph's claim for the purposes of this report. The Panel therefore considered the amount of USD 2,247,775 for contract losses, loss of tangible property, payment or relief to others and financial losses, as follows:

Table 21. Intergraph's claim

Claim element	Claim amount (USD)
Contract losses	1,440,877
Loss of tangible property	742,745
Payment or relief to others	59,800
Financial losses	4,353
Total	2,247,775

A. Contract losses

1. Facts and contentions

419. Intergraph seeks compensation in the amount of USD 1,440,877 for contract losses allegedly incurred in connection with IME's "billed uncollected receivables" and "unbilled receivables".

2. Analysis and valuation

(a) "Billed uncollected receivables"

420. Intergraph seeks compensation in the amount of USD 307,196 for "bil uncollected receivables" owing from five debtors in Kuwait and Japan, fo services performed in Kuwait.

421. Several of the outstanding amounts are debts which fell due and payable well before Iraq's invasion and occupation of Kuwait, including as far back as 1987. Intergraph did not provide an explanation as to why the debts were still outstanding at the time of Iraq's invasion and occupation of Kuwait. Moreover, Intergraph did not explain the direct link between the non-payment of the debts and Iraq's invasion and occupation of Kuwait.

422. In relation to the outstanding amounts which were due either to the invasion date (for example, of July 1990), Intergraph did not explain why the amounts due were not recovered either before 2 August 1990 or following the end of Iraq's invasion and occupation of Kuwait, to what extent, if any, it or IME took to recover the outstanding amounts, knowing were due upon receipt of IME's invoice.

423. Intergraph provided as evidence of its alleged losses an internally generated receivables analysis for each debtor and copies of some of the invoices. Intergraph also provided a letter of confirmation from IME's auditor that Intergraph's claim was prepared from and was in accordance with IME's records.

424. This Panel has found that a claimant must provide specific proof that the failure of a non-Iraqi debtor to pay was a direct result of Iraq's invasion and occupation of Kuwait. A claimant must demonstrate, for example, that such a business debtor was rendered unable to pay due to insolvency or bankruptcy caused by the destruction of its business during Iraq's invasion and occupation of Kuwait, or was otherwise entitled to refuse to pay the claimant. Intergraph did not supply such proof in relation to its claim for "billed uncollected receivables".

425. The Panel consequently finds that Intergraph did not demonstrate that its losses in connection with "billed uncollected receivables" were the direct result of Iraq's invasion and occupation of Kuwait.

(m) "Unbilled receivables"

426. Intergraph seeks compensation in the amount of USD 1,141,681 for "unbilled receivables" in relation to two projects in Kuwait.

(i) Kudama project

427. Intergraph seeks compensation in the amount of USD 780,580 for goods and services provided by IME on the Kudama project.

428. IME was a sub-contractor to Mitsui Engineering and Shipbuilding Co. ("Mitsui"), a Japanese company, on the Kudama project. The contract price was stated as KWD 520,539. IME invoiced Mitsui on 2 March and 19 July 1990 for 60 per cent of the contract price and received the corresponding payments. Intergraph alleges that it is still owed the remaining 40 per cent of the contract price, amounting to 208,216, less KWD 16,744 for services that were not performed and KWD 18,946 for "warranty, workmen

and training". Intergraph then converted its claim denominated in Kuwaiti dinars to United States dollars.

429. Intergraph alleges that following Iraq's invasion and occupation of Kuwait, the letter of credit opened for the project expired and Mitsui would not approve any additional payments because Mitsui's equipment was stolen during Iraq's invasion and occupation of Kuwait.

430. Intergraph did not provide any evidence establishing that the failure of Mitsui to pay the outstanding amounts was the direct result of Iraq's invasion and occupation of Kuwait, by establishing, for example, that Mitsui was unable to pay the outstanding amounts due to bankruptcy or insolvency or was entitled to refuse to pay for any other reason.

431. Intergraph provided as evidence of its alleged losses, copies of invoices, a copy of the letter of credit dated 14 September 1989, and correspondence with Mitsui, including correspondence after Iraq's invasion and occupation of Kuwait, which deals with the subject of settling the outstanding amount. Intergraph also provided correspondence with Mitsui dated May 1991 requesting that the letter of credit be extended. Mitsui responded in August 1991 stating that it wanted to cancel the letter of credit due to the difficulties of fulfilling the contractual obligations experienced by both parties.

432. The Panel finds that Intergraph did not demonstrate that its losses in relation to the Kudams project were the direct result of Iraq's invasion and occupation of Kuwait. Intergraph failed to demonstrate that the failure of Mitsui to pay the amounts due and owing was attributable to Mitsui being rendered insolvent or liquidated as a direct result of Iraq's invasion and occupation of Kuwait or that Mitsui was otherwise entitled to refuse to pay IME.

(ii) Ministry of Defence of Kuwait

433. Intergraph seeks compensation in the amount of USD 301,615 for unpaid systems delivered to the Ministry of Defence of Kuwait (the "Ministry").

434. Intergraph alleges that amounts falling due under the contract were to be invoiced to the Ministry through IME's local agent in Kuwait. The agent was billed on 24 May 1991, however, Intergraph alleges that he refused to pay.

435. In relation to the same debtor, Intergraph also seeks compensation in the amount of USD 41,476 representing unbilled freight and miscellaneous items for the Kuwait Municipality. Intergraph states that these items would have been billed but for Iraq's invasion and occupation of Kuwait.

436. Intergraph did not provide an explanation as to why the amounts due were not recovered following the end of Iraq's invasion and occupation of

Kuwait. Intergraph made no allegation that the Kuwait Municipality and the Ministry were unable to pay for the delivered systems.

437. The Panel finds that Intergraph did not demonstrate that its losses in relation to the Ministry were the direct result of Iraq's invasion and occupation of Kuwait. Intergraph failed to demonstrate that the failure of the Kuwait Municipality and the Ministry to pay the amounts due and owing was attributable to the Kuwait Municipality and the Ministry being rendered insolvent as a direct result of Iraq's invasion and occupation of Kuwait or that the Kuwait Municipality and the Ministry were otherwise entitled to refuse to pay IMS.

f. Recommendation

438. The Panel recommends no compensation for contract losses.

9. Loss of tangible property

a. Facts and contentions

439. Intergraph seeks compensation in the amount of USD 41,748 for loss of tangible property. The claim is for the alleged loss of tangible property (fixed assets and inventory) left in IMS's Kuwait office.

440. Intergraph alleges that the managing director of IMS visited the Kuwait office in February 1991. According to Intergraph, the office was open and a security guard informed the managing director that all of the property had been stolen by the Iraqi forces.

441. Intergraph originally classified an alleged loss in the amount of USD 19,126 as "loss of income producing property", but the losses are more appropriately classified as tangible property losses. The Panel has, therefore, considered these losses together with the balance of USD 22,648, which was classified in Intergraph's original claim submission as loss of tangible property.

b. Analysis and valuation

442. Intergraph provided as evidence of its alleged losses an undated internally generated table of "fixed assets" and an internally generated "fixed asset register" for its office equipment as at 30 November 1990. The printouts provide the equipment purchase date, cost, rate of depreciation, cumulative depreciation and attribute a net value of USD 17,322 to the equipment. In relation to the alleged lost inventory, Intergraph provided an internally generated, undated, inventory. Because the inventory list is undated, it is impossible to verify whether it was contemporaneous with Iraq's invasion and occupation of Kuwait. Intergraph did not provide any other evidence.

443. The Panel finds that Intergraph failed to provide sufficient evidence which demonstrated its title to or right to use, and the value and the presence in Kuwait of, the property.

3. Recommendation

444. The Panel recommends no compensation for loss of tangible property.

C. Payment or relief to others

1. Facts and contentions

445. Intergraph seeks compensation in the amount of USD 59,800 for payment or relief to others. The claim is for the alleged costs of compensating IME's employees for the loss of personal items which were left behind in Kuwait.

446. IME had an office in Kuwait to support and service its customers. Intergraph alleges that four staff members were stationed in Kuwait, while IME's other staff travelled from Cyprus and other offices to Kuwait whenever their support was required. At the time of Iraq's invasion and occupation of Kuwait, Intergraph states that the branch office in Kuwait was abandoned and all employees left Kuwait. Intergraph states that the employees' personal property was stolen by the Iraqi forces and that IME compensated its employees for their losses.

2. Analysis and valuation

447. Intergraph provided as evidence of its alleged losses internally generated letters to the employees along with the employe ' lists of personal items lost in Iraq. Intergraph did not provide any evidence that it actually compensated its employees.

448. The Panel finds that Intergraph failed to provide sufficient evidence in support of the alleged costs of compensating IME's employees for the loss of their personal items.

3. Recommendation

449. The Panel recommends no compensation for payment or relief to others.

D. Financial losses

1. Facts and contentions

450. Intergraph seeks compensation in the amount of USD 4,353 for financial losses. The claim relates to funds in several accounts with the National Bank of Kuwait ("NBK"), which were allegedly stolen, including funds from a "petty cash" account. One of the accounts was in the name of IME's pre-invasion manager in Kuwait.

451. Intergraph alleges that it was unable to recover the remainder of the bank balances held with the UBK because the manager who was handling ZMK's Kuwait operations did not return after the war. Intergraph alleges that it does not have any other records which would enable it to recover the balances.

452. Intergraph originally classified the claim for financial losses as "other losses", but the losses are more appropriately classified as financial losses.

3. Analysis and valuation

453. Intergraph provided as evidence of its alleged losses a ledger printout showing the bank balances at the UBK. It also provided a copy of a cheque, dated 28 November 1990, in the amount of 7,147 Kuwaiti dinars (USD 23,708) paid by the UBK to ZMK's former manager, and correspondence evidencing the partial payment of one of the bank balances.

454. From the evidence provided, it is clear that Intergraph did receive partial payment in November 1990 through ZMK's former manager of the amount held in the account. Intergraph did not provide any evidence regarding the "petty cash" account.

455. The Panel finds that Intergraph failed to prove that the funds in the accounts were appropriated, removed, stolen or destroyed and, therefore, how it suffered any loss.

4. Recommendation

456. The Panel recommends no compensation for financial losses.

E. Recommendation for Intergraph

Table 22. Recommended compensation for Intergraph

Claim element	Claim amount (USD)	Recommended compensation (USD)
Contract losses	1,440,877	nil
Loss of tangible property	742,745	nil
Payment or relief to others	59,800	nil
Financial losses	4,353	nil
Total	2,247,775	nil

457. Based on its findings regarding Intergraph's claim, the Panel recommends no compensation.

XIV. PARSONS, DE LEUW, INC.

458. Parsons, De Leuw, Inc. ("Parsons") is a corporation organised according to the laws of the United States of America. At the time of Iraq's invasion and occupation of Kuwait, Parsons was operating under the name of De Leuw, Cather & Company in the area of the design and supervision of roading projects. De Leuw, Cather & Company changed its name to Parsons, De Leuw, Inc. in 1992.

459. Parsons seeks compensation on behalf of its wholly owned subsidiary, De Leuw, Cather International Limited, a corporation organised according to the laws of the United Kingdom. Parsons stated that it carried on its overseas business through De Leuw, Cather International Limited, which incurred the losses for which Parsons seeks compensation. In 1994, De Leuw, Cather International Limited assigned all of its rights to bring a claim before the Commission to Parsons.

460. In the "E" claim form, Parsons sought compensation in the amount of USD 1,338,966 for contract losses and other losses. The Panel has reclassified elements of Parsons' claim for the purposes of this report. The Panel also notes that Parsons made arithmetic errors in the calculation of its reclassified claim for payment or relief to others. The nature of the errors is described in paragraph 491, infra. The Panel therefore considered the amount of USD 1,265,503 for loss of profits, payment or relief to others and other losses, as follows:

Table 23. Parsons' claim

Claim element	Claim amount (USD)
Loss of profits	599,842
Payment or relief to others	585,482
Other losses	80,179
Total	1,265,503

A. Loss of profits

1. Facts and contentions

461. Parsons seeks compensation in the amount of USD 599,842 for loss of profits which it expected to receive in relation to three projects. The projects, insofar as they concerned Parsons' participation, related to the design and construction of roads, and were underway or about to commence in Kuwait as at the date of Iraq's invasion and occupation of Kuwait. The Ministry of Public Works, Kuwait (the "Ministry") was the employer for all three projects.

462. Two of the projects were projects for the construction of the Sixth Ring Road (the "Sixth Ring Road Project") and the Ghazali Expressway (the "Ghazali Expressway Project") in and around Kuwait City. The third project was for the design of the Makkah Al Mukarramah Hospital and the Master Plan (the "Hospital Project").

463. Parsons asserted that all of the projects were terminated by Iraq's invasion and occupation of Kuwait and that they were not resumed after the liberation of Kuwait.

(a) The Sixth Ring Road Project

464. Under Agreement EF/S/12, Parsons agreed to provide supervision services for the Sixth Ring Road Project to the Ministry.

465. The date of the agreement was not supplied and it has not been possible from the limited evidence which Parsons provided to detail the nature of the Project or Parsons' responsibilities. It appears that Parsons and another consulting engineering company, Pan Arab Consulting Engineers of Kuwait ("PACE"), supervised the work of a construction company which was executing the Project works under Contract RA 64 between the construction company and the Ministry. Parsons did not explain PACE's role in relation to the contract works.

466. The budget for Parsons' services under the contract was FWD 3,475,686 by virtue of an amendment to the agreement (Amendment No. 3) dated 21 January 1987. Pursuant to Amendment No. 5, the works commenced on 1 March 1987 and the period for their completion was extended until 30 September 1990.

467. Parsons stated that all of its costs were reimbursed by the Ministry, except for salary and overheads from which it derived a 10 per cent level of 'profit'. Parsons asserted that this agreed 'profit' was equivalent to the amount of FWD 200,049 over the life of the agreement.

468. As at the date of Iraq's invasion of Kuwait, Parsons' performance under the agreement was substantially complete (approximately 76 per cent). Parsons stated that for its work until 2 August 1990, the Ministry had already paid Parsons the amount of KWD 182,341 in respect of the 'profit' component. Parsons seeks compensation for the unpaid 'profit' component in the amount of KWD 17,708 (USD 60,208).

(b) The Ghazali Expressway Project

469. A consortium comprising Parsons and PACE entered into Agreement EF/R/45 with the Ministry under which the consortium agreed to provide engineering supervision services for the Ghazali Expressway Project. The date of the agreement was not supplied. The Panel notes that the "F3" Panel recently considered a claim by the Ministry in relation to the Ghazali Expressway Project and reviewed evidence relevant to Parsons'

claim. The Ministry asserted that the agreement with Parsons and PACE had not been signed as at 2 August 1990, although the contract had been negotiated and was expected to be signed in September 1990.

470. Under the extract from Agreement EF/R/45 which Parsons provided to the Panel, Parsons and PACE agreed to supervise Contract RA/91 between the Ministry and the construction company which was expected to execute the Project works. As between Parsons and PACE, Parsons was the leader of the consortium and was contractually responsible to the Ministry in all respects. PACE provided employees and earned income and 'profit' from its contribution.

471. Parsons stated that as at the date of Iraq's invasion of Kuwait, its performance had not yet commenced under the agreement. Performance was due to start on 1 September 1990. Parsons asserted that under the agreement, it was entitled to receive the amount of KWD 153,010 for 'profit' over the life of the agreement. As with the agreement for the Sixth Ring Road Project, the Ministry reimbursed Parsons for most of its costs. The 'profit' component represented 10 per cent of salaries and overhead and was a figure which was agreed with the Ministry.

472. Parsons seeks compensation in the amount of KWD 153,010 (USD 520,234) for the profit which it expected to receive over the life of the agreement for the Ghazali Expressway Project.

(c) The Hospital Project

473. Parsons entered into a sub-contract with PACE dated 1 August 1988 for the provision of traffic analysis consultancy services in relation to the Hospital Project. The principal agreement, Agreement SPF/08/88, between PACE and the Ministry, was dated 19 July 1988.

474. Parsons' obligations under the sub-contract were limited to the survey and design of traffic services.

475. PACE agreed to pay Parsons the amount of KWD 15,706 under the sub-contract. Parsons stated that there were three phases of work under the sub-contract. It stated that it had completed and been paid for the first phase of its work, but that work on the second and third phases had not commenced as at 2 August 1990.

476. Parsons asserted that under the sub-contract, it would have received the amount of KWD 5,706 for its work on the second and third phases. It asserted that all of its costs were fixed, so that the amount of KWD 5,706 represented its profit component for the sub-contract.

477. Parsons seeks compensation in the amount of KWD 5,706 (USD 19,400) for the profit which it expected to receive for the balance of the sub-contract.

2. Analysis and valuation

478. The requirements to substantiate a loss of profits claim have been stated by the Panel in paragraphs 26 and 27, supra.

479. In support of its claims in relation to all of the Projects, Parsons provided as evidence two affidavits of an employee of Parsons who was the Kuwait office manager at the time of Iraq's invasion and occupation of Kuwait. The affidavits support Parsons' assertions as to the effect of Iraq's invasion and occupation of Kuwait on the Projects it was undertaking and verify the calculations of its claimed losses.

480. In support of its claim in relation to the Sixth Ring Road Project, Parsons provided a copy of Amendment No. 5 to the agreement, dated 31 January 1987. The agreement itself was not provided. Parsons also supplied correspondence from Parsons to the Ministry in January 1987 attaching a budget proposal. This correspondence appears to have formed the basis for the proposal, which was accepted with minor amendments by Parsons on 21 January 1987. The budget proposal contained extensive payment terms and a detailed breakdown of the 'profit' figure. Finally, Parsons provided a letter from Parsons to the Ministry dated 18 October 1991 seeking payment for work carried out up to 3 August 1990 and attaching a detailed invoice.

481. In relation to the Ghazali Expressway Project, Parsons provided limited extracts from Agreement EF/R/45 and correspondence with the Ministry regarding the date of commencement of the agreement.

482. In relation to the sub-contract for the Hospital Project, Parsons provided the sub-contract itself and one letter to PACE dated prior to the sub-contract.

483. In the article 34 notification, Parsons was asked to provide, inter alia, the following financial documentation for each Project: audited financial statements; budgets; management accounts; turnover statements; original bids and tender sum analyses; time schedules; profit/loss statements; finance costs and head office costs. As has been explained in paragraph 480, supra, Parsons provided the budgets, time schedules and tender sum analyses for the Amendment to the agreement for the Sixth Ring Road Project in the form of the contractual documentation for that Project itself in its original claim submission. Parsons did not reply to the article 34 notification. Consequently, it did not provide the requested documentation in relation to any of the other Projects at any time.

484. Parsons supplied evidence which established that the Sixth Ring Road and Hospital Projects were ongoing as at 2 August 1990 and were interrupted by Iraq's invasion and occupation of Kuwait. It also supplied evidence which established that the Ghazali Expressway Project was likely to commence in September 1990.

485. However, Parsons provided insufficient evidence of the terms of the agreements for the Sixth Ring Road and the Ghazali Expressway Projects to establish that Parsons suffered any losses and that the alleged losses were suffered as a direct result of Iraq's invasion and occupation of Kuwait. Without evidence of all the relevant contractual terms, the Panel is unable to assess Parsons' assertion that it was contractually entitled to receive the alleged 'profit' under either agreement.

486. In relation to the sub-contract for the Hospital Project, Parsons supplied sufficient evidence of the contractual terms, including the terms of payment. However, Parsons provided no evidence to substantiate its assertion that all of its costs were fixed. Such evidence would include invoices for work carried out under the first phase. The Panel consequently considers that, in the absence of evidence regarding Parsons' actual costs in relation to the sub-contract for the Hospital Project, Parsons failed to demonstrate that it suffered any losses and that the alleged losses were suffered as a direct result of Iraq's invasion and occupation of Kuwait.

487. Moreover, the Panel finds that Parsons failed to provide sufficient information and evidence to assess whether its claimed 'profit' under all three agreements represented the actual profit which Parsons could have expected to earn. In the absence of audited financial statements, in particular, the Panel was unable to verify Parsons' assertions with respect to its profitability under all three agreements.

3. Recommendation

488. The Panel recommends no compensation for loss of profits.

B. Payment or relief to others

1. Facts and contentions

489. Parsons seeks compensation in the amount of USD 585,482 for payment or relief to others. The claim is for the alleged costs of salary and other payments made to 18 expatriate employees, many of whom were detained by the Iraqi authorities until December 1990, and payments of termination benefits to 45 local employees recruited in Kuwait.

490. Parsons stated that all of its employees were working on the Sixth Ring Road Project at the time of Iraq's invasion and occupation of Kuwait.

491. The Panel notes that in its Statement of Claim, Parsons sought compensation for payment or relief to others in the amount of USD 658,945, including the amount of USD 140,332 for payment of 'completion bonuses' to expatriate employees. However, a review of the supporting schedules showed that Parsons' claim for the 'completion bonuses' actually totalled USD 79,957, a difference of USD 60,375. Further, in the "E" claim form and the Statement of Claim, Parsons calculated that all of the schedules in

relation to its claim for payment or relief to others supported a claim amount of USD 658,945. However, the Panel found that these schedules only supported a claim amount of USD 645,857, representing a difference of USD 13,088. The Panel consequently recalculated the amount of Parsons' claim as a claim in the amount of USD 585,482 (USD 658,945 less USD 60,375 less USD 13,088).

492. Parsons alleged that under the agreement for the Sixth Ring Road Project, the Ministry was required to reimburse Parsons for almost all of the payments for which Parsons seeks compensation as direct costs. Parsons stated that it would have recovered the balance of the payments as part of its charge for overheads.

(a) Expatriate employees

493. In relation to the expatriate employees who were detained, Parsons asserted that it was unable to terminate their employment while they were detained. Once these employees were released or escaped, Parsons gave them 30 days' notice of termination of their employment. Parsons asserted that it was also required to give, and did give, the expatriate employees who were not detained, the same period of notice commencing on 12 August 1990. Parsons alleged that it was contractually required to make salary payments to its expatriate employees while they were detained, and to all of its expatriate employees during the notice periods under their respective contracts of employment, in the amount of USD 202,853.

494. Parsons further alleged that it was contractually required to make payments to its employees for the following benefits which accrued during this period: medical and life insurance premiums in the amount of USD 8,779; holiday pay in the amount of USD 67,594; relocation, travel and living allowances in the total amount of USD 26,370; and the costs of storage of employees' property in the amount of USD 12,524. Parsons also alleged that the employees were also entitled to receive 'completion bonuses', equivalent to 10 per cent of their base salary, upon the termination of their employment, in the amount of USD 79,957.

495. Finally, Parsons sought reimbursement of the amounts which it paid to some of these employees for airfares and associated travel costs to their homes after they were released or escaped in the amount of USD 24,872.

496. Parsons accordingly seeks compensation in the amount of USD 422,949 for payments to the expatriate employees.

(b) Local (Kuwaiti) employees

497. In relation to the local employees, Parsons asserted that it was required under Kuwait's labour laws to pay these employees termination benefits based on their length of service. Parsons seeks compensation for payment of terminal benefits in the amount of USD 162,533.

2. Analysis and valuation

498. Parsons provided as evidence of its alleged losses copies of the following documents: the two affidavits referred to in paragraph 479, supra; Amendment No. 5 to the agreement for the Sixth Ring Road Project; Parsons' invoice dated 18 October 1991 sent to the Ministry regarding payment of amounts earned until 3 August 1990; air tickets; invoices; letters from Parsons to the expatriate employees with calculations of proposed payments; internal payment authorisations; records relating to employee leave; cheques; and letters and notes from the employees confirming calculations and receipt of payments.

499. The Panel requested the secretariat to carry out cross-checks of individual claims filed by Parsons' employees. The individual claims contained evidence of the contractual terms of employment for the expatriate employees and evidence of their detention.

(a) Expatriate employees

500. Parsons provided substantial evidence of payment to the expatriate employees of the amounts claimed. After considering the totality of the evidence before it, the Panel finds that there is sufficient evidence of Parsons' obligation to make all of the payments for which it seeks compensation.

501. The Panel also finds that the documentation relating to Amendment No. 5 to the agreement for the Sixth Ring Road Project refers to all of the loss elements for which Parsons seeks compensation as being payable by Parsons to the employees. The majority of the loss elements claimed were direct costs reimbursable by the Ministry. Further, the invoice dated 18 October 1991 provided by Parsons links the employees' names with their positions and salary and other payments during the period of 14 July until 3 August 1990. The Panel finds that the figures and entitlements provided for in Amendment No. 5 to the agreement for the Sixth Ring Road Project and the invoice correspond with the evidence of payments made to the employees.

502. The Panel is satisfied that this evidence establishes that Parsons' claims for all payments to the 18 expatriate employees are, in principle, direct losses. However, the Panel also notes that while Parsons claimed for these costs in relation to all 18 expatriate employees, the evidence which Parsons and its employees provided indicated that only 13 employees were actually detained.

503. Further, in relation to the claim for holiday pay, the evidence indicates that Parsons in fact seeks compensation for pay accrued up to 2 August 1990. Parsons should have been reimbursed these payments by the Ministry when the Ministry paid Parsons' invoice of 18 October 1991. In relation to holiday pay accrued during the period of the employees' detention and notice period, the contracts of employment and leave records

are insufficiently exact to allow the verification of Parsons' calculations.

504. In relation to the alleged payment of insurance premiums, the Panel finds that Parsons provided insufficient proof of payment.

505. In relation to salary payments and the completion bonuses, there were some discrepancies between the amounts which Parsons paid to the 18 employees, their entitlements according to their contracts of employment, and their entitlements as set out in the agreement for the Sixth Ring Road Project. The Panel finds that there is sufficient evidence to establish Parsons' obligation to make these payments to the 13 expatriate employees for the period of their detention and subsequent notice period, using the employees' base salary (that is, their salary excluding any benefits or uplifts) as the basis for calculation, in the amount of USD 195,412. The Panel reaches the same conclusion in relation to the claim for salary payments to the five expatriate employees who were not detained, in the amount of USD 42,662.

506. In relation to the other loss elements, the Panel finds that there is sufficient evidence to establish that the claims for storage costs, relocation, travel and living allowances, and airfares, are direct losses in the amount of USD 42,207.

(b) Local (Kuwaiti) employees

507. Parsons provided only general evidence in support of its claim for payment of terminal benefits to the local employees. Parsons failed to provide any specific documentary evidence in relation to this claim, and, in particular, that it actually paid the amounts claimed. The Panel therefore recommends no compensation for payment of terminal benefits to the local employees.

3. Recommendation

508. The Panel recommends compensation in the amount of USD 280,281 for payment or relief to others.

C. Other losses

1. Facts and contentions

509. Parsons seeks compensation in the amount of USD 80,179 for other losses.

510. Parsons alleged that after the liberation of Kuwait, the Ministry advised it that the three Projects would not be resumed. Parsons had no other business in Kuwait and consequently closed its office there, thereby incurring the costs for which it seeks compensation. Parsons stated that the process of winding down its operations in Kuwait necessitated the

presence of employees of Parsons in Kuwait at various times, as well as the assistance of legal representatives of Parsons. Parsons had to arrange the termination of domestic and office leases, and of its telephone accounts. Finally, Parsons asserted that it was contractually required to arrange for the shipment of the personal effects of its employees.

511. Parsons seeks compensation in the amount of USD 75,179 for the telephone, lease, legal, shipping and travel expenses which it allegedly incurred. Parsons claims a further contingent amount of USD 5,000 for any future closure costs.

2. Analysis and valuation

512. In support of its claim for other losses, Parsons provided copies of the following documents: invoices; correspondence with parties in Kuwait; internal payment authorisations; cheques; and documents evidencing transfer of funds. The Panel finds that the evidence provided constitutes sufficient evidence of payment of the majority of the costs claimed.

513. However, Parsons failed to provide any evidence which demonstrated that the alleged losses were suffered as a direct result of Iraq's invasion and occupation of Kuwait. In order for costs of the kind alleged to be compensable, a claimant must show that the costs exceeded what it would ordinarily have had to pay to conclude its presence in Kuwait.

514. However, Parsons provided no evidence, and indeed made no assertion, that its presence in Kuwait was expected to continue after the completion of the three Projects. Of these Projects, only the Ghazali Expressway Project was a long term project. Parsons did not state how long the Project works were expected to take, but there is some documentation which enabled the Panel to assess the period of the contract as 49 months. This gives a finishing date for the Project of late 1994.

515. It is therefore likely that Parsons would have had to terminate its presence in Kuwait in the years following Iraq's invasion and occupation of Kuwait in any event, with attendant costs. Parsons failed to demonstrate that the costs which it did incur were in addition to the costs which it could have expected to pay had closure occurred in the normal course of business.

3. Recommendation

516. The Panel recommends no compensation for other losses.

D. Recommendation for Panama

Table 21. Recommended compensation for Panama

Claim element	Claim amount (USD)	Recommended compensation (USD)
Loss of profits	599,442	nil
Payment in relief to others	585,840	280,281
Other losses	80,271	nil
Total	1,265,553	280,281

317. Based on its findings regarding Panama's claim, the Panel recommends compensation in the amount of USD 280,281. The Panel finds the date of loss to be 2 November 1990.

XV. RECOMMENDATIONS

518. Based on the foregoing, the Panel recommends the following amounts of compensation for direct losses suffered by the claimants as a result of Iraq's invasion and occupation of Kuwait:

(a) SHAL International: NIL;

(b) China Sichuan Corporation for International Techno-Economic Cooperation: USD 21,396;

(c) China Ningxia Islamic Corporation for International Economic and Technical Cooperation: NIL;

(d) The Arab Contractors "Osman Ahmed Osman & Co.": NIL;

(e) Campenon Bernard: NIL;

(f) Brückner Grundbau GmbH: NIL;

(g) Technika Hungarian Foreign Trading Company: USD 207,461;

(h) Transinvest Engineering and Contracting Limited: NIL;

(i) Associated Consulting Engineers S.A.L.: USD 30,608;

(j) Mouchel Consulting Limited: USD 405,470;

(k) Intergraph Corporation: NIL; and

(l) Parsons, De Leuw, Inc.: USD 280,281.

Geneva, 12 December 2000

(Signed) Mr. Werner Melis
Chairman

(Signed) Mr. David Mace
Commissioner

(Signed) Mr. Sompong Sucharitkul
Commissioner